

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-7673

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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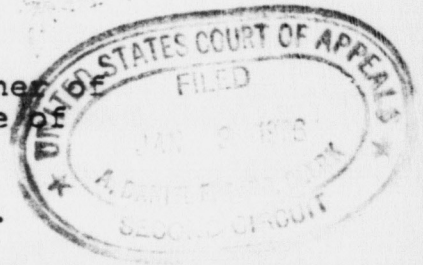
MARION AITCHISON, individually and on behalf of MICHAEL AITCHISON, and JANICE AITCHISON, her children, and on behalf of all other persons similarly situated,

Plaintiffs-Appellees,

-against-

STEPHEN BERGER, individually and as Commissioner of the Department of Social Services of the State of New York,

Defendant-Appellant.



On Appeal from the United States District Court for the Southern District of New York

JOINT APPENDIX,

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PLAINTIFFS

MARION AITCHISON, INDIVIDUALLY AND ON
BEHALF OF MICHAEL AITCHISON AND JANICE
AITCHISON, HER CHILDREN, AND ON BEHALF
OF ALL OTHER PERSONS SIMILARLY SITUATED,

Stephen Berger ~~XXXXXXXXXXXX~~ DEFENDANTS

FRANKEL, J.

RE LAVINE, INDIVIDUALLY AND AS
COMMISSIONER OF THE DEPARTMENT OF SOC
SERVICES OF THE STATE OF NEW YORK,
AND NOAH WEINBERG, INDIVIDUALLY AND
AS COMMISSIONER OF THE DEPARTMENT OF
SOCIAL SERVICES OF ROCKLAND COUNTY,
NEW YORK.

J.N.

CAUSE

CIVIL RIGHTS. 42 U.S.C. 1983

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(for deft. NOAH WEINBERG)

-1-

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DOCKET ENTRIES

DATE	NR.	PROCEEDINGS
03-12-75	1	Filed Complaint, Issued Summons.
04-03-75	2	Filed summons and return- served the following: Noah Weinberg on 03-25-75 Abe Lavine by Martha Green on 03-18-75
04-18-75	3	Filed ANSWER of deft. Abe Lavine to the complaint (L.J.L.)
04-22-75	4	Filed stip & order adjourning defts' time to answer to the complaint from 04-09-75 to 04-18-75. So ordered- FRANKEL, J.
04-24-75	5	Filed stip & order that defts' time to answer the complaint be adjourned from 04-18-75 to 04-25-75 and that pliffs' time to file class action motions be adjourned from 05-12-75 to 06-12-75. So ordered- FRANKEL, J.
04-28-75	6	Filed ANSWER of deft. Noah Weinberg, individually and as Commissioner of the (D.W.R.) Dept. of Social Services of Rockland County to the complaint.
05-27-75	7	Filed pliff's statement pursuant to rule 9(g) and notice of motion for summary judgment....Ret. 7-7-75..
05-27-75	8	Filed pliff's memorandum of law in support of summary judgment.
05-27-75	9	Filed affdvt. & notice of motion by pliff. for class action determination..Ret. 7-7-75..
05-27-75	10	Filed pliff's memorandum in support of class action motion.
07-08-75	11	Filed stip & order that pliffs' motion pursuant to Rule 56 be adjourned from 07-07-75 to 08-06-75-- that pliffs' motion pursuant to Rule 23 be similarly adjourned from 07-07-75 to 08-06-75-- that paragraph 31 of the complaint be amended as indicated. So ordered- FRANKEL, J.
07-23-75	12	Filed Defts' Lavine's Notice of Cross Motion for summary judgment pursuant to Rule 56(b). Ret. 08-06-75.
07-23-75	13	Filed Defts' Affidavit in opposition to pliffs' class action motion and summary judgment motion.
07-23-75	14	Filed Defts' Lavine Memorandum of Law in opposition to Pliffs' motion for summary judgment and for class action status and in support of Deft Lavine's Cross-Motion to dismiss.
08-04-75	15	Filed pliffs' affdvt. of Rene H. Reixach in opposition to deft. Lavine's motion for summary judgment.
08-04-75	16	Filed pliffs' answer to deft. Lavine's Rule 9 (g) statement.
08-04-75	17	Filed pliffs' reply memorandum of law and memorandum of law in opposition to summary judgment motion of deft. Lavine.
08-22-75	18	Filed Memorandum for Counsel- Opinion # 42992-- to assist counsel in preparing for oral argument, the court draws attention to the subjects which counsel should be prepared to treat as indicated. FRANKEL, J. (m/n)
08-28-75	19	Filed pliffs' supplemental affdvt. of Rene H. Reixach in support of motion for class action determination.
9-10-75	20	Filed Stip & Order that Stephen Berger is substituted for deft Abe Lavine effective on the date of this Stip...and other agreed facts.....Frankel, J.
09-24-75	21	Filed supplemental memorandum of law in support of state deft's motion for summary judgment and in opposition to pliffs' motion for summary judgment.
10-01-75	22	Filed pliffs' supplemental affdvt. of Rene H. Reixach to correct and update information pertaining to which of the 58 social services districts in N.Y. have public assistance allowances, etc.
10-03-75	23	Filed pliffs' supplemental reply memorandum of law.
10-08-75	24	Filed Deft Lavine Affidavit in opposition to pliff's motion for class action status. by Eleanor A. Sochocki.

DOCKET ENTRIES

ALTON ALTONSON, etc. et al- vs- ABE LAVINE, etc. et al

(PAGE # 3)

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Judgm
0-09-75	(25) Filed stip & order that the Stipulation entered into on 09-09-75 is amended and supplemented as indicated. So ordered- FRANKEL, J.	(M)
10-16-75	(26) Filed plttf's supplemental affdvt. of Rene H. Reixach to further supplement affdvt. dated 09-24-75.	
10-31-75	(27) Filed plttfs' affdvt. and notice of motion for an order amending the complaint. Ret. 11-12-75	
10-31-75	(28) Filed plttfs' memorandum of law in support of motion to amend.	
11-07-75	---- Filed memo endorsed on document # 27--motion withdrawn. So ordered- FRANKEL, J. (m/n)	
11-12-75	(29) Filed OPINION # 43380-- the basic issues now before the court are whether New York's statutory and regulatory scheme setting income eligibility and retention levels for the medically needy are compatible with applicable federal regulations, and, if not, whether these federal regulations are themselves inconsistent with the Social Security Act. For the reasons stated, the court declares the state statute and regulations invalid as applied to class members- will enjoin defts. from enforcing these provisions against class members and- will order defts. to compute the entitlements of class members on the basis hereinabove outlines, namely, to protect for maintenance amounts no less than those allowed to comparable ADC recipients. Settle a final decree on notice. FRANKEL, J. (m/n)	
12-4-75	Filed Memorandum-Decision #43475 & Order. Parties have submitted differing forms of orders & judgments, the differences reflecting two major issues as indicated. Upon the foregoing premises, the court has concluded that the order & judgment submitted by defts, as modified by the court, should be signed at this time to permit the prompt processing of any appeals.....FRANKEL, J. m/n	
12-4-75	Filed Order & Judgment that defts motions to dismiss are denied. Pltffs motion for a class action order is granted, as indicated. Pltffs motion for summary judgment is granted. Ordered, that 45 C.F.R. §248.3(c)(1) as applied to the class herein is declared consistant & therefore valid. N.Y. Social Services Law, as indicated are declared inconsistent & therefore invalid as applied to the class. Defts, etal are permanently enjoined from enforcing N.Y. Social Services Law, as indicated against the class, etc. The retained exempt income of class members shall be recomputed in conformity with the provisions of this Order & Judgment within 25 days from the entry thereof. Deft (Berger) Comm. shall transmit to the Comm's of all social services district within the state instructions to conform with the provisions of this Order & Judgment within 10 business days after the entry thereof..... FRANKEL, J. Judgment Entered, 12-4-75, Clerk m/n	
12-5-75	Filed deft Stephen Berger's notice of appeal to the USCA from the Order & Judgment of J. Frankel, granting plttfs motion for a class action & summary judgment on their third claim as amended. Copies sent to: Rene H. Reixach, Greater Up-State Law Project, Monroe County Legal Assistance Corp., 80 West Main St., Rochester N.Y. 14614. - Douglas J. Good, Alton L. Abramowitz, Rockland County Legal Aid Society, 2 Congers Rd. New City, N.Y. 10956. - Diane W. Rivet, John B. Franklin, 11 New Hempstead Rd., New City, N.Y. 10956	
12-12-75	Filed plttfs affdvt & notice of motion for leave to appeal in forma pauperis. Rec. 12-16-75	

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Page #4

FRANKEL, J

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COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARION AITCHISON, individually and
on behalf of MICHAEL AITCHISON and
JANICE AITCHISON, her children, and
on behalf of all other persons similarly
situated,

Plaintiffs,

- against -

ABE LAVINE, individually and as Commissioner
of the Department of Social Services of the
State of New York, and NOAH WEINBERG, individ-
ually and as Commissioner of the Department
of Social Services of Rockland County, New
York,

Defendants.

Civil Action No.
COMPLAINT
CLASS ACTION
THREE-JUDGE COURT

75 CIV 1003
JUDGE FRANKEL

INTRODUCTION

1. The plaintiffs are the wife and children of a recipient of medical assistance from the Department of Social Services of Rockland County, New York. Pursuant to Section 356.2 (a) (8) of the New York Social Services Law and regulations of the Department of Social Services of the State of New York, 18 N.Y.C.R.R. § 360.5 (e) (1) (i), they are required to live on a budget \$107.00 per month less than the amount they would receive if they were recipients of public assistance, since the allowance for the family of a medical assistance recipient is \$107.00 per month less than for a public assistance family of the same size with the same expenses for rent. The plaintiffs contend that they are denied equal protection of law in that they are required to live on less than

COMPLAINT

recipients of public assistance similarly situated, and that the challenged statute and regulations are contrary to federal law and regulations. The convening of a three-judge court and class action relief are sought.

JURISDICTION

2. Jurisdiction of this action is vested in this Court pursuant to 28 U.S.C. § 1343 subd. (3) and (4), which provide for the jurisdiction of the district courts over civil actions authorized by law to be commenced by any person a) to redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity guaranteed by the Constitution of the United States or by any Act of Congress providing for equal rights; and b) to secure relief under any Act of Congress providing for the protection of civil rights.

3. Jurisdiction of this action is further vested in this Court pursuant to 28 U.S.C. § 1331 (a), which provides for the jurisdiction of the district courts over civil actions wherein the matter in controversy exceeds the sum or value of \$10,000 exclusive of interest and costs, and arises under the Constitution or Laws of the United States. The amount in controversy herein exceeds the sum or value of \$10,000, exclusive of interest and costs.

PARTIES

4. The plaintiffs are all residents of Rockland County, New York, within the Southern District of New York. The plaintiff Marion Aitchison is the wife of George Aitchison, a disabled 54 year old man who has been

COMPLAINT

a patient in a nursing home since 1972. The other plaintiffs are her two children, Michael Aitchison, age twenty, a full-time community college student, and Janice Aitchison, age sixteen, a high school student.

5. The defendant Abe Lavine is the Commissioner of the Department of Social Services of the State of New York. He is the chief administrator of that department and is responsible for exercising general supervision over the work of all local welfare authorities in New York pursuant to Section 34 of the New York Social Services Law.

6. The defendant Noah Weinberg is the Commissioner of the Department of Social Services of Rockland County, New York. He is responsible for the general supervision of that department pursuant to Section 65 of the New York Social Services Law.

CLASS ACTION

7. The plaintiffs bring this action pursuant to Rule 23 (b) (2) of the Federal Rules of Civil Procedure on behalf of themselves and on behalf of a class of all other persons similarly situated, namely all medically needy persons in the State of New York who are required by the defendants or any local department of social services to live on a monthly income allowance which is below the level of need for public assistance for a family of the same size, with the same expenses for rent, in the particular county.

8. The class is so numerous that joinder of all members is impracticable. On information and belief, persons living in the urbanized counties of New York, including New York City, Westchester County, Nassau County,

COMPLAINT

Rockland County, and Monroe County, as well as most other counties in the state, who are dependents of responsible relatives who receive medical assistance as medically indigent persons but who are not eligible for public assistance, are members of the class and number over one hundred thousand. According to "Social Statistics", Vol. 36 no. 10, October, 1974, published by the defendant Abe Lavine, in October, 1974 there were 224,211 persons in New York receiving medical assistance who were not also receiving public assistance (Table 5, p. 4). On information and belief, tens of thousands of those persons, situated like the plaintiffs, are responsible for dependent relatives.

9. There are questions of law or fact common to the class, namely whether the schedules of exempt income and minimum reserve for maintaining a family household under the medical assistance program are set at a level which violates federal law and regulations and the Equal Protection clause of the Fourteenth Amendment to the Constitution of the United States. The claims of the representative parties are typical of the claims of the class, and the representative parties will fairly and adequately protect the interests of the class -- they are represented by counsel employed by Legal Services Programs who are experienced in welfare litigation and in class actions.

10. The parties opposing the class, the defendant Abe Lavine, and his subordinate, the defendant Noah Weinberg, have acted or refused to act on grounds generally applicable to the class, namely under the New York Social Services Law and the regulations thereunder promulgated by the

COMPLAINT

defendant Abe Lavine, thereby making appropriate final injunctive relief and/or corresponding declaratory relief with respect to the class as a whole.

THREE-JUDGE COURT

11. This is a proper case for determination by a three-judge court pursuant to 28 U.S.C. §§ 2281, 2284 since plaintiff seeks an injunction to restrain defendants, who are state officers, from the enforcement, operation and execution of a state statute Section 366.2 (a) (8) of the New York Social Services Law, and a state regulation, 18 N.Y.C.R.R. § 360.5 (e) (1) (i), both of state-wide applicability on the ground that said statute and regulation are contrary to the Constitution of the United States.

FACTS

12. The family household of the plaintiff Marion Aitchison consists of three persons, her and her two children.

13. The husband of the plaintiff Marion Aitchison, George Aitchison, has been in a nursing home since 1972.

14. On October 17, 1974, the Rockland County Department of Social Services determined that George Aitchison was eligible for medical assistance in a nursing home.

15. The total monthly income of the "family household" composed of the plaintiffs is \$312.79. It consists of \$92.59 from a mortgage on real property, plus \$110.10 in Social Security benefits for the plaintiff Marion Aitchison and another \$110.10 in Social Security benefits for the

COMPLAINT

other plaintiffs, her two children. The husband of the plaintiff Marion Aitchison currently receives \$256.30 each month in disability benefits from the Social Security Administration, plus a pension of \$277.59 each month from Western Electric, for a total monthly income of \$533.89. Mr. Aitchison is allowed to retain \$28.50 per month for his personal expenses pursuant to 18 N.Y.C.R.R. § 360.5 (e), leaving him \$505.39 per month to meet both the maintenance needs of the plaintiffs not met by their income, and his medical expenses. The plaintiff Marion Aitchison and her children, the other plaintiffs, are allowed \$333.00 per month on which to live.

16. Pursuant to the regulations of the New York State Department of Social Services, 18 N.Y.C.R.R. § 350.5 (e) (1) (i), and Section 366.2 (a) (8) of the New York Social Services Law, applied by the Rockland County Department of Social Services, Mr. Aitchison's income may be used to meet the maintenance needs of the plaintiffs only to the extent of \$20.21 per month, the amount required to bring the plaintiffs' family income to a level of \$333.00 per month; \$485.15, the rest of his monthly income (but for an additional monthly allowance of \$20.80 for the plaintiffs' visits to him in the nursing home) is to be applied to his medical expenses.

17. The basis living allowance for a three person household receiving public assistance in New York State is \$200.00 per month pursuant to New York Social Services Law § 131-a (3) and 18 N.Y.C.R.R. § 352.2 (e).

18. The rental allowance for a three person household receiving public assistance in Rockland is the actual amount of rent paid, not in

COMPLAINT

excess of \$243.00 per month.

19. The plaintiff Marion Aitchison pays \$240.00 per month for rent.

20. The public assistance standard of need for the plaintiffs is \$440.00 per month, consisting of a basic grant of \$200.00 and a rent allowance of \$240.00.

21. Under the medical assistance program the plaintiffs' family household is allowed an amount on which to live that is \$107.00 less than the public assistance level for a three person household with the same rent; i.e. \$333.00 rather than \$440.00.

22. The plaintiff Marion Aitchison requested an administrative fair hearing to review the determination by the Rockland County Department of Social Services that the plaintiffs are allowed only \$333.00 per month for the needs of the family household (plus an additional \$20.80 per month for the cost of visits to Mr. Aitchison), and on November 14, 1974 that hearing was held before a hearing officer duly designated by the defendant Abe Lavine.

23. The December 18, 1974, fair hearing decision of the Commission of the New York State Department of Social Services, the defendant Abe Lavine, affirmed the determination of the local department (a copy of the decision is annexed hereto as "Exhibit A").

24. In so administering the medical assistance program in New York, the defendant Abe Lavine is responsible for administering a fund of over 1.5 billion dollars a year, of which, on information and belief, approx-

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LEGAL AID SOCIETY OF ROCKLAND COUNTY, INC.

- / / -

COMPLAINT

mately 300 million dollars a year is for the persons like Mr. Aitchison who receive medical assistance only and do not receive cash public assistance. The schedules challenged herein result in millions of dollar of underpayments from the medical assistance fund each year where such medical assistance recipients have dependents who are required to live below the public assistance level under the challenged statute and regulations.

25. The plaintiffs have no adequate remedy at law.

FIRST CAUSE OF ACTION

26. The plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 25 herein.

27. The defendants' policies which require the plaintiffs to exist on a budget \$107.00 less than the applicable public assistance standard of need, including rent and fuel, violate the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

SECOND CAUSE OF ACTION

28. The plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 27 herein.

29. The defendants' standards for determining the amount of income the plaintiffs may retain for non-medical needs are not reasonable standards comparable for all groups, in violation of 42 U.S.C. § 1396-a (a) (17).

THIRD CAUSE OF ACTION

30. The plaintiffs repeat and reallege each and every allegation

COMPLAINT

contained in paragraphs 1 through 29 herein.

31. The levels of income for maintenance established and utilized by the defendants are less than the most liberal money payment standard used by the State of New York at any time on or after January 1, 1966, as a measure of financial eligibility in any categorical money payment program in the State in violation of 45 C.F.R. §§ 248.21 (a) (3) (i) (b) and 248.21 (a) (3) (i) (c).

FOURTH CAUSE OF ACTION

32. The plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 31 herein.

33. The defendants are violating the Supremacy Clause, Article VI, clause 2, of the Constitution of the United States.

FIFTH CAUSE OF ACTION

34. The plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 33 herein.

35. The defendants, acting under color of statutes and regulations of the State of New York, are depriving the plaintiffs of rights, privileges and immunities secured by the Constitution and laws in violation of 42 U.S.C. § 1983.

WHEREFORE, the plaintiffs demand judgment:

1. Determining that this action is maintainable as a class action pursuant to Rules 23 (a) and 23 (b) (2) of the Federal Rules of Civil Procedure;

2. Enjoining, after the convening of a three-judge court, pursuant to 28 U.S.C. §§ 2281 et seq. on the constitutional claims, or by a single

COMPLAINT

judge on the other claims, the defendants' continued use and reliance on the tables of exempt income in Section 366.2 (a) (8) of the New York Social Services Law and 18 N.Y.C.R.R. § 360.5 (e) or any other standards, insofar as they are less than the applicable public assistance standards for the persons required to exist thereon;

3. Declaring, pursuant to 28 U.S.C. §§2201 et seq. that the defendants' policies as set forth in Section 366.2 (a) (8) of the New York Social Services Law and 18 N.Y.C.R.R. § 360.5 (e) are illegal and unconstitutional and null and void, to the extent that they require persons to live below the applicable public assistance level;

4. Requiring the defendant Abe Lavine to immediately promulgate new standards for all local social services commissioners not inconsistent with the Constitution, federal law and regulations as herein determined, and to promptly notify all local social services commissioners of same;

5. Awarding the plaintiffs costs and disbursements herein, plus reasonable attorneys' fees;

6. Awarding such other and further relief as seems proper and just.

Dated: March 4, 1975
New City, New York

COMPLAINT

Respectfully submitted,

Douglas J. Good

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Attorneys for Plaintiff

ANSWER OF DEFENDANT LAVINE

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

-----X
MARION AITCHISON, et al.,

Plaintiffs,

-against-

: ANSWER

ABE LAVINE, individually and as Commissioner: 75 Civ. 1224
of the Department of Social Services of (MEF)
the State of New York, and ABAH WEINBERG, :
individually, and as Commissioner of the :
Department of Social Services of Rockland :
County, New York, :

Defendants.
-----X

Defendant, ABE LAVINE, for an answer to the complaint
of Marion Aitchison, et al., by and through his attorney,
LOUIS J. LEFKOWITZ, Attorney General of the State of New York,
respectfully alleges:

1. Denies each and every material allegation set forth in paragraphs "2", "3", "7-11", "27", "29", "31", "33", and "35" thereof.
2. Lacks knowledge or information sufficient to form a belief with respect to each and every allegation in paragraphs "13", "14", "18", "19", "20", "21" and "25" thereof.
3. With respect to the allegations in paragraph "1", deny each and every allegation therein which states or implies that plaintiffs' constitutional or other federally protected rights have been abridged or violated.
4. Admit the allegations set forth in paragraph "15" thereof; except state further on information and belief that the figures set forth therein are not an exhaustive listing of the income resources available to Plaintiff Aitchison and her family. According to records of Defendant Weinberg, plaintiff received \$2,579.20 as a social security award for her husband's disability; plaintiff also has two life insurance policies.

ANSWER OF DEFENDANT LAVINE

5. With respect to the allegations in paragraph "17", admit only to the extent of the verbatim content of the New York State statute and regulation set forth therein.

6. With respect to the allegations in paragraph "24", deny^{is} insofar as they state or imply that plaintiff's constitutional or other federally protected rights have been abridged or violated.

7. With respect to paragraphs "26", "28", "30", "32", and "34" repeat the pleadings of this answer pertinent to the paragraphs of the complaint set forth therein.

AS AND FOR A FIRST SEPARATE AND
COMPLETE AFFIRMATIVE DEFENSE
ALLEGES THAT:

8. In addition to the income resources set forth in paragraph "15" of their complaint, the Aitchison family, according to records of Defendant Weinberg, also has available and has been allowed to retain \$2,579.20 in monies from a social security award granted on October 3, 1973 for ^{the} her husband's disability. Plaintiff also ^{has} two life insurance policies in the amounts of \$6,000 and \$1,000 respectively.

9. Accordingly, plaintiff's resources to meet her ^{monthly} living expenses ^{are} actually in excess of the amount alleged by her -- namely, \$333.00.

10. Plaintiff Aitchison lacks standing to present her claims.

AS AND FOR A SECOND SEPARATE AND
COMPLETE AFFIRMATIVE DEFENSE
ALLEGES THAT:

11. Plaintiff Aitchison fails to set forth a sufficient basis for the maintenance of a class action.

ANSWER OF DEFENDANT LAVINE

12. Plaintiffs fail to state a claim upon which relief may be granted.


AS AND FOR A FOURTH SEPARATE AND
COMPLETE AFFIRMATIVE DEFENSE
ALLEGES THAT:

13. Plaintiffs fail to set forth a sufficient basis for the exercise of federal jurisdiction.

WHEREFORE, it is respectfully requested that the complaint be in all respects dismissed.

Dated: New York, New York
April 17, 1975

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendant Lavine
By:



DAVID R. SPIEGEL
Assistant Attorney General
Office and P.O. Address
Two World Trade Center
New York, New York 10047
Tel. No. (212) 488-7591

ANSWER OF DEFENDANT WEINBERG
UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

----- -x
MARION AITCHISON, et al., :

Plaintiffs, :

-against- :

ABE LAVINE, individually and as Com- :
missioner of the Department of Social :
Services of the State of New York, and :
ABAH WEINBERG, individually, and as :
Commissioner of the Department of Social :
Services of Rockland County, New York, :

Defendants. :

ANSWER

75 Civ. 1224
(MEF)

----- -x
The Defendant NOAH WEINBERG, individually and as
Commissioner of the Department of Social Services of Rockland
County, sued herein as ABAH WEINBERG, by his attorney, DIANA
W. RIVET, County Attorney of the County of Rockland as and for
his answer to the complaint herein:

1. Denies each and every allegation contained in the
paragraphs designated "2", "3", "7", "8", "9", "10", "11", "27",
"29", "31", "33" and "35" of the complaint herein.

2. Denies each and every allegation contained in the
paragraph designated "1" of the complaint herein insofar as
the said paragraph alleges, states or implies that Plaintiffs'
constitutional or other federally protected rights have been
abridged or violated.

ANSWER OF DEFENDANT WEINEBERG

3. Denies each and every allegation contained in the paragraph designated "24" of the complaint herein insofar as said paragraph alleges, states or implies that Plaintiffs' constitutional or other federally protected rights have been abridged or violated.

4. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph designated "25" of the complaint herein.

5. With respect to the paragraphs designated "26", "28", "30", "32" and "34" of the complaint herein, Defendant Weinberg repeats and realleges each and every denial heretofore made herein of the paragraphs realleged and reiterated by the Plaintiff.

AS AND FOR A FIRST, SEPARATE
AND COMPLETE DEFENSE

6. Plaintiffs fail to set forth a sufficient basis for the exercise of federal jurisdiction.

AS AND FOR A SECOND, SEPARATE
AND COMPLETE DEFENSE

7. Plaintiffs fail to set forth sufficient facts to constitute a cause of action for which relief might be granted.

AS AND FOR A THIRD, SEPARATE
AND COMPLETE DEFENSE

8. Plaintiffs fail to set forth sufficient facts to constitute a base for the maintenance of a class action.

ANSWER OF DEFENDANT WEINBERG
AS AND FOR A FOURTH, SEPARATE
AND COMPLETE DEFENSE

9. The basic criteria for qualification under the Medicaid category of public assistance are widely different from those basic criteria for qualification for public assistance such as Home Relief and Aid to Dependent Children.

10. The eligibility requirements for public assistance permit the local Department of Social Services to take a mortgage on premises owned by an applicant to the extent of all assistance rendered or to be rendered. In addition the eligibility criteria for public assistance permits practically no retention of assets of any kind, i.e. assets of any kind must be considered and either used or made available to the applicant prior to qualification of public assistance.

11. The eligibility criteria for Medicaid do not permit a mortgage to be taken on real property owned by a prospective applicant and in addition certain assets are exempt from consideration for eligibility purposes. For example, an applicant is permitted a burial reserve of \$500 per person in the household to a maximum of \$2000. Such burial reserve may consist of cash, other liquid assets or cash value of life insurance policies. In addition a prospective applicant for Medicaid coverage is permitted a savings exemption which increases with the size of the family so that a family of four would be permitted to have cash savings of \$2500 in addition

ANSWER OF DEFENDANT WEINEERG

to the burial reserve heretofore referred to, a total of \$4500. the maximum of \$4500 (for a family of four) increases as the size of a family increases.

12. There can hardly be a comparison between Medicaid coverage and public assistance when the basic criteria for eligibility differ. The differing basis for retention of assets permits a Medicaid recipient greater security in terms of cash and retained assets.

13. It would appear that the schedules of income permitted an applicant, though differing as between Medicaid recipients and straight public assistance recipients, differ because of the asset base permitted the two types of applicants.

14. Upon information and belief on an actuarial basis the applicants for the respective types of assistance enjoy the equal protection of law.

FOR A FIFTH, SEPARATE AND
COMPLETE DEFENSE

15. Plaintiff MARION AITCHISON received a social security disability award (as did other members of the family) on or about October 3, 1973, and same was not immediately reported to the Department of Social Services as required.

16. The Department of Social Services ascertained the above information through another source.

17. Plaintiff claimed that she used the said check to pay a debt to a brother which had accrued in 1968, and

ANSWER OF DEFENDANT WEINBERG

produced a cancelled check bearing date of October 8, 1973
in proof thereof.

18. Plaintiff got the benefit of said monies without
any reduction in aid from the Department of Social Services.

19. In addition Plaintiff has gotten the benefit over
the years of retaining insurance policies in the amount of
\$600 and \$1000 respectively which is upon information and
belief greater than the burial reserve which should be permitted
in such matters.

20. Plaintiff invokes the aid of the Court with
unclean hands.

21. Plaintiffs' case is unique and not common to a class.
WHEREFORE, Defendant Weinberg respectfully prays for
judgment dismissing the complaint herein with costs and for
such other and further relief as to the Court might seem just
and proper.

Dated: April 25, 1975
New City, New York

DIANA W. RIVET
County Attorney, County of
Rockland
Attorney for Defendant Weinberg
Office & P.O. Address
County Office Building
11 New Hempstead Road
New City, New York 10956
Tel. No. (914) 638 0500

PLAINTIFFS' NOTICE OF MOTION FOR SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARION AITCHISON, Individually
and on behalf of MICHAEL AITCHISON
and JANICE AITCHISON, her minor
children, and on behalf of all
other persons similarly situated,

Plaintiffs,

-against-

ABE LAVINE, as Commissioner of the
Department of Social Services of
the State of New York and NOAH
WEINBERG, as Commissioner of the
Department of Social Services of
Rockland County, New York,

Defendants.

75 Civ. 1224
MEF

NOTICE OF MOTION
FOR SUMMARY JUDGMENT

SIRS:

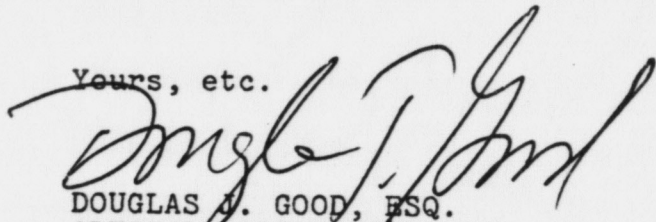
PLEASE TAKE NOTICE, that upon the annexed statement pursuant to rule 9(g), the annexed affidavit of Rene H. Reixach, Esq., and all other proceedings herein, the plaintiffs will move this Court before the Honorable Marvin E. Frankel, United States District Judge, at the United States Courthouse, Foley Square, New York, New York, on the 2nd day of ^{July}~~June~~, 1975, or as soon thereafter as counsel can be heard, for an order pursuant to Rule 56 of the Federal Rules of Civil Procedure, granting the plaintiffs summary judgment on their third claim, namely that the levels of income for maintenance established and utilized by the defendants violate 45 C.F.R. sections 248.21(a)(3)(1)(B)

PLAINTIFFS' NOTICE OF MOTION FOR SUMMARY JUDGMENT

and (c), and for such other and further relief as seems proper and just.

Dated: May 23, 1975

Yours, etc.


DOUGLAS J. GOOD, ESQ.
ALTON L. ABROMOWITZ, ESQ.
LEGAL AID SOCIETY OF
ROCKLAND COUNTY, INC.
2 Congers Road
P.O. Box 314
New City, New York 10956
Tel: 914-634-3627

RENE H. REIXACH, ESQ.
MARGARET MAHONEY, ESQ.
GREATER UP-STATE LAW PROJECT
MONROE COUNTY LEGAL
ASSISTANCE CORPORATION
80 West Main Street
Rochester, New York 14614
Tel: 716-454-6500

Attorneys for Plaintiffs

TO: HON. LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attn: David R. Spiegel, Esq.
Two World Trade Center
New York, New York 10047

DIANA W. RIVET, ESQ.
County Attorney
County Office Building
11 New Hempstead Road
New City, New York 10956

Attorneys for Defendants

PLAINTIFFS' STATEMENT PURSUANT TO RULE 9(g) IN SUPPORT
OF MOTION FOR SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARION AITCHISON, Individually and
on behalf of MICHAEL AITCHISON and
JANICE AITCHISON, her minor chil-
dren, and on behalf of all other
persons similarly situated,

Plaintiffs,

-against-

ABE LAVINE, as Commissioner of the
Department of Social Services of
the State of New York and NOAH
WEINBERG, as Commissioner of the
Department of Social Services of
Rockland County, New York,

Defendants.

75 Civ. 1224
MEF

STATEMENT PURSUANT
TO RULE 9(g)

Plaintiffs contend that there is no genuine issue to be
tried with respect to the following material facts:

1. The plaintiffs are the wife and two children, age
twenty and sixteen and both full-time students, of a disabled 54
year old man who has been a nursing home patient since 1972 and
who receives medical assistance from the Department of Social
Services of Rockland County, New York.

2. The defendants are the commissioners of the Depart-
ments of Social Services of the State of New York and of Rockland
County, New York.

3. On October 17, 1974, the Department of Social Ser-
vices of Rockland County, New York determined that the husband of
the adult plaintiff and the father of the two minor plaintiffs
was eligible for medical assistance in a nursing home.

PLAINTIFFS' STATEMENT PURSUANT TO RULE 9(g) IN SUPPORT
OF MOTION FOR SUMMARY JUDGMENT

4. The plaintiffs, a family household of three, are allowed a total income of \$333.00 per month on which to live, pursuant to section 366.2(a)(8) of the New York Social Services Law and 18 N.Y.C.R.R. 360.5(e)(1)(1).

5. The public assistance standard of need for the plaintiffs is \$440.00 per month, consisting of a three person basic allowance of \$200.00 per month and a rental allowance of \$240.00 per month, the actual rent paid by the adult plaintiff.

6. Under the medical assistance income allowances the plaintiffs are allowed \$107.00 per month less than the public assistance standard of need for the plaintiffs.

7. In some counties in New York State the total public assistance standard of need, including rent and (where applicable) heat, is never in excess of the income allowances under the medical assistance program set forth in section 366.2(a)(8) of the New York Social Services Law.

8. In other counties in New York State at some, but not all, family sizes, the total public assistance standard of need, including rent and (where applicable) heat, can exceed the income allowances under the medical assistance program set forth in section 366.2(a)(8) of the New York Social Services Law.

9. In Rockland County and certain other counties in New York State, at all family sizes, the total public assistance standard of need, including rent and (where applicable) heat, can exceed the income allowances under the medical assistance program

PLAINTIFFS' STATEMENT PURSUANT TO RULE 9 (a) IN SUPPORT
OF MOTION FOR SUMMARY JUDGMENT

set forth in section 366.2(a)(8) of the New York Social Services Law.

10. In administering the medical assistance program in New York the defendant Lavine is responsible for administering a fund of which millions of dollars annually is used to provide medical assistance for persons not receiving cash public assistance, and if the schedules challenged herein are illegal they result in millions of dollars of underpayments from the medical assistance fund each year.

DOUGLAS J. GOOD, ESQ.
ALTON L. ABROMOWITZ, ESQ.
LEGAL AID SOCIETY OF
ROCKLAND COUNTY, INC.
2 Congers Road
P.O. Box 314
New City, New York 10956
Tel: 914-634-3627

RENE H. REIXACH, ESQ.
MARGARET MAHONEY, ESQ.
GREATER UP-STATE LAW PROJECT
MONROE COUNTY LEGAL
ASSISTANCE CORPORATION
80 West Main Street
Rochester, New York 14614
Tel: 716-454-6500

Attorneys for Plaintiffs

AFFIDAVIT OF RENE H. REIXACH, SWORN TO MAY 20, 1975 , IN SUPPORT
OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARION AITCHISON, Individually
and on behalf of MICHAEL AITCHISON
and JANICE AITCHISON, her minor
childrer, and on behalf of all
other persons similarly situated,

Plaintiffs,

-against-

ABE LAVINE, as Commissioner of the
Department of Social Services of
the State of New York and NOAH
WEINBERG, as Commissioner of the
Department of Social Services of
Rockland County, New York,

Defendants.

75 Civ. 1224
MEF

AFFIDAVIT IN SUPPORT
OF PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

RENE H. REIXACH, being duly sworn, deposes and says:

1. I am a member of the Bar of this Court and one of
the attorneys for the plaintiffs herein; I make this affidavit in
support of the plaintiffs' motion for summary judgment. In
addition to the matters referred to herein, the Court is respect-
fully referred to my affidavit of May 19th in support of the
plaintiffs' class action motion and the affidavit of James
Reynolds in support thereof.

2. The crux of this action is that the plaintiffs and
many other persons in New York State are allowed levels of income
under the medical assistance program which are below the applic-
able standards of need for cash assistance under New York's

AFFIDAVIT OF RENE H. REIXACH, SWORN TO MAY 20, 1975, IN SUPPORT
OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

public assistance programs. The facts are not in dispute; all of the relevant facts have been pleaded in the complaint (Exhibit "A" annexed) and admitted by the defendants in their answer (Exhibits "B" and "C" annexed).

3. The plaintiffs are the wife and two children, age twenty and sixteen and both full-time students, of a disabled 54 year old man who has been a nursing home patient since 1972 and who received medical assistance from the Department of Social Services of Rockland County, New York. (Complaint, ¶¶1, 4; Lavine answer ¶3 and otherwise not denied; Weinberg answer, ¶2 and otherwise not denied).

4. The defendants are the Commissioners of the Departments of Social Services of the State of New York and of Rockland County, New York. (Complaint, ¶¶5 and 6; not denied).

5. On October 17, 1974, the Department of Social Services of Rockland County, New York, determined that Mr. Aitchison was eligible for medical assistance in a nursing home. (Complaint, ¶14; not denied in Weinberg answer; Defendant Lavine alleges lack of sufficient knowledge or information to form a belief, but see Fair Hearing transcript at p. 3, Exhibit H to my affidavit in support of class action motion).

6. The plaintiffs, a family household of three, are allowed \$333.00 income each month for non-medical needs, pursuant to section 366.2(a)(8) of the New York Social Services Law and 18 N.Y.C.R.R. section 360.5(e)(1)(i). (Complaint, ¶¶15, 16; Lavine answer ¶4 admits as to ¶15 of the complaint and ¶16 of the

AFFIDAVIT OF RENE H. REIXACH, SWORN TO MAY 20, 1975, IN SUPPORT
OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

complaint is not denied; not denied in Weinberg answer).

7. The public assistance standard of need for the plaintiffs is \$440.00 per month, consisting of a three person basic allowance of \$200.00 per month and a rental allowance of \$240.00 per month, the actual rent paid by Mrs. Aitchison. (Complaint, ¶¶17-20; not denied in Weinberg answer; Defendant Lavine does not deny ¶17 of complaint but in ¶2 of his answer alleges lack of sufficient knowledge or information to form a belief, but see Fair Hearing transcript at pp. 6-8, Exhibit H, to my affidavit in support of class action motion).

8. Under the medical assistance income allowances the plaintiffs are allowed \$107.00 per month less than the public assistance standard of need for the plaintiffs. (Complaint, ¶21; not denied in Weinberg answer; Defendant Lavine in ¶2 of his answer alleges lack of sufficient knowledge or information sufficient to form a belief, but see Fair Hearing transcript at p.8, Exhibit H, to my affidavit in support of class action motion).

9. In some counties of New York the medical assistance income allowances are always higher than the public assistance standard of need, in others the medical assistance income allowances are sometimes higher and sometimes can be lower than the public assistance standard of need, and in Rockland and other counties the medical assistance income allowances always can be lower than the public assistance standard of need (See my affidavit in support of class action motion ¶¶ 15, 17).

AFFIDAVIT OF RENE H. REIXACH, SWORN TO MAY 20, 1975, IN SUPPORT
OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

10. In administering the public assistance program in New York the defendant Lavine is responsible for administering a fund of which millions of dollars annually is used to provide medical assistance for persons not receiving cash public assistance, and if the schedules challenged herein are illegal they result in millions of dollars of underpayments from the medical assistance fund each year. (Complaint, ¶24; Lavine answer, ¶6; Weinberg answer ¶3).

11. From the foregoing it is apparent that New York's medical assistance income allowances are less than the "most liberal money payment standard" used by New York "as a measure of financial eligibility in any categorical money payment program" in New York, as required by 45 C.F.R. section 248.21(a)(3)(1)(B).

12. It further appears that the defendants are also violating 45 C.F.R. section 248.3(c)(1)(ii), which requires that income levels for maintenance be "as a minimum, at the higher of the levels of the payment standards generally used as a measure of financial eligibility in the money payment programs" in a state. This is made clear in a listing of compliance problems with New York's social services programs during the quarter ending March 31, 1975, which, on information and belief, was supplied by the New York Regional Office of the United States Department of Health, Education and Welfare, a copy of which is annexed as Exhibit "D."

AFFIDAVIT OF RENE H. REIXACH, SWORN TO MAY 20, 1975, IN SUPPORT
OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

WHEREFORE, I pray that the plaintiffs' motion for
summary judgment be granted.

RE H R
RENE H. REIXACH

Sworn to before me this

20th day of May, 1975.

Sharon Truesdell

SHARON TRUESDELL
Notary Public, State of N. Y., Monroe County
No. 4517304
Commission Expires March 30, 1976

FAIR HEARING DECISION, RE: PLAINTIFF MARION AITCHISON, EXHIBIT A
(PART) TO REIXACH AFFIDAVIT OF MAY 20

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

In the Matter of the Appeal of

MARION AITCHISON

: DECISION
: AFTER
: FAIR
: HEARING

from a determination by the Rockland County Department
of Social Services (hereinafter called the agency).

A fair hearing was held at Pomona, New York, on November 14, 1974, before William R. Meyers Hearing Officer, on which the appellant, the appellant's daughter, and a representative of the agency appeared. The appeal is from a determination by the agency relating to the adequacy of medical assistance. An opportunity to be heard having been accorded all interested parties and the evidence having been taken and due deliberation having been had, it is hereby found:

- (1) The appellant's husband has been confined to a nursing home since 1972. The family consists of appellant, her husband and two minor dependent children.
- (2) The appellant's husband is in receipt of medical assistance. The agency is requiring the appellant to contribute to the cost of his care in the nursing home.
- (3) The appellant's husband receives \$256.30 in social security and income from a mortgage of \$92.59 a month for total income of \$348.89. which is being used toward payment of his medical expenses. Appellant has income from social security and her husband's pension totaling \$497.97 a month. Appellant has no deductions for income taxes, health insurance premiums or court ordered support payments.

Section 360.5(e) of the Regulations of the State Department of Social Services provides that a person in chronic care shall not be deemed to be a member of any household and shall be allowed an exemption of \$28.50 per month from his net income for personal expenses.

This section further provides that a person in chronic care with three dependent relatives must use \$4,000. annually for \$333. monthly of his income for support of his relatives, less an income possessed by such relatives. Since appellant has a net monthly income of \$497.79, all of appellant's husband's income, less \$28.50 per month must be used to meet his medical expenses.

The appellant's husband is a legally responsible relative and she has an obligation to contribute to his medical expenses. This obligation is spelled out in Section 360.7 of the Regulations. Pursuant to that section, appellant has an exemption of \$333. per month and all of her net income in excess of that amount, \$164.79, must be contributed to the cost of appellant's husband's medical expenses. However, this same section provides that the amount actually received shall be applied toward meeting the needs of the appellant's husband. This is in accord with Section 366.3(a) of the Social Services Law which provides that:

FAIR HEARING DECISION, RE: PLAINTIFF MARION AITCHISON, EXHIBIT A
(PART) TO RELIACH AFFIDAVIT OF MAY 20
MARION AITCHISON (2)

"Medical assistance shall be furnished to applicants in cases where, although such applicant has a responsible relative with sufficient income and resources to provide medical assistance as determined by the Regulations of the Department, the income and resources of the responsible relative are not available to such applicant because of the absence of such relative or the refusal or failure of such relative to provide the necessary care and assistance. In such cases, however, the furnishing of such assistance shall create an implied contract with such relatives, and the cost thereof may be recovered from such relative in accordance with title six of article three and other applicable provisions of law."

Although the appellant has not contributed to the cost of her husband's medical care, the agency must continue medical assistance in light of the above provisions of the Social Services Law.

DECISION: The determination of the agency is affirmed.

DATED: Albany, New York DEC 18 1974

Abe Lavine
Abe Lavine
COMMISSIONER

BY Carmen Shang
Carmen Shang
ASSISTANT COMMISSIONER

LETTER FROM ELMER W. SMITH, REGIONAL COMMISSIONER OF HEW TO GERALD A. NORLANDER, ESQ., DATED MAY 7, 1975, WITH COMPLIANCE QUESTIONS, EXHIBIT D TO REIXACH AFFIDAVIT OF MAY 20



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

REGION II
FEDERAL BUILDING
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10007
May 7, 1975

RECEIVED

MAY 9 1975

LEGAL AID SOCIETY
MOUNT VERNON, N. Y.

Mr. Gerald A. Norlander
The Legal Aid Society of
Westchester County
Mount Vernon Branch Office
City Hall - Roosevelt Square
Mount Vernon, New York 10550

Dear Mr. Norlander:

You requested copies of correspondence to New York State listing compliance issues raised by the Department of Health, Education, and Welfare.

The attached material reflects questions raised on State Compliance with Federal requirements for the quarter ending March 31, 1975.

Sincerely,

Elmer W. Smith
Regional Commissioner

By *Judith Rackmiller*
Judith Rackmiller

Enclosure

Exhibit D
-36-

LETTER FROM ELMER W. SMITH, REGIONAL COMMISSIONER OF NEW YORK TO GERALD NORLANDER, ESQ., DATED MAY 7, 1975, WITH COMPLIANCE QUESTIONS, EXHIBIT D TO REIXACH AFFIDAVIT OF MAY 20, 1975
NEW YORK

Questions raised on State compliance with Federal requirements March 31, 1975

Medical Services Program

Section 1902(a)(4) - SSA
Section 1902(a)(20) - SSA
Section 299B of PL 92-603

Medical Services Program

Section 1905(a)(4)(B) - SSA
SKS-PR-40-11(c-4)
CFR 249.10(a)(3)(iii) and (iv)

Medical Services Program

SRS-PR-10-15(c-4)

Medical Services Program

Section 1902(a)(4)(a) - SSA
SRS-PR-40-14(c-1)
45 CFR-250.80(a)(4)(i)&(ii)(6)&(7)

Administration of Assistance for Aged and Individuals Under 21 in Mental Institutions

The State does not meet Federal requirements for staffing of the Medical Assistance Unit for the administration of the program for assistance for aged individuals and individuals under 21 in mental institutions.

EPSDT

State has failed to fully implement the EPSDT Program for the 6-21 year olds in New York City. 470,000 eligible individuals are in this population group.

Sterilization

State regulations did not conform with Federal requirements. The State has since revised its position. The R.O. has been assured by the New York Department of Social Services that the governor signed the amendment and that it is in the process of being mailed. However, to date the R.O. has not received it.

Fraud

Some investigatory work is going on at the local social services level throughout the State and particularly in New York City with regard to alleged Medicaid abuse and fraud. However, the reporting system is inadequate both at the local/State and State/SRS levels. State agency does not have in place adequate procedures for reporting information on provider abuse and fraud to SRS.

LETTER FROM ELMER W. SMITH, REGIONAL COMMISSIONER OF HEW TO GERALD A.
NORLANDER, ESQ., DATED MAY 7, 1975, WITH COMPLIANCE QUESTIONS, EXHIBIT
D TO RELIXACH AFFIDAVIT OF MAY 20

Medical Services Program

45 CFR 248.3(c)(i)(ii)(B)(2)
Section 1903(f)(1)(B)(i) of SSA

Medically Needy Level

Due to a series of factors, the
cash assistance standards have
become more liberal than the MA
standards for most family sizes.

LETTER FROM ELMER W. SMITH, REGIONAL COMMISSIONER OF HEW TO GERALD A. NORLANDER, ESQ., DATED MAY 7, 1975, WITH COMPLIANCE QUESTIONS, EXHIBIT D TO RELKACH AFFIDAVIT OF MAY 20

NEW YORK STATE

QUESTIONS RAISED ON STATE COMPLIANCE WITH FEDERAL REQUIREMENTS

MARCH 31, 1975

Manpower Development & Training

45CFR205.202 Titles IVA and XIX

45CFR220.10

45CFR222.8

Practice issue. Educational Leave policies suspended; Legislature failed to appropriate funds

LETTER FROM ELMER W. SMITH, REGIONAL COMMISSIONER OF NEW YORK TO GERALD A. NORLANDER, ESQ., DATED MAY 1, 1975, WITH COMPLIANCE QUESTIONS, EXHIBIT D TO RELIXACH AFFIDAVIT OF MAY 20

April 4, 1975

NEW YORK

Questions Raised on State Compliance with Federal Requirements

Assistance Payments

45 CFR 233.20(a) (2)

State-wide Shelter Standard
Practice issue. Failure to implement a new shelter standard submitted and approved during the January-March, 1974, quarter.

45 CFR 233.20(a) (2)
402 (a) (23)

Up-dating shelter standard
Practice issue. Local maximums were up-dated where necessary as part of the development of the proposed State-wide standard. Some but not all counties requiring up-dating have come into compliance.

PLAINTIFFS' NOTICE OF MOTION FOR CLASS ACTION DETERMINATION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARION MITCHISON, et al.,
Plaintiffs,

-against-

ABE LAVINE, et al.,
Defendants.

Civil Action No.
75 Civ. 1224
MEF

NOTICE OF CLASS
ACTION MOTION

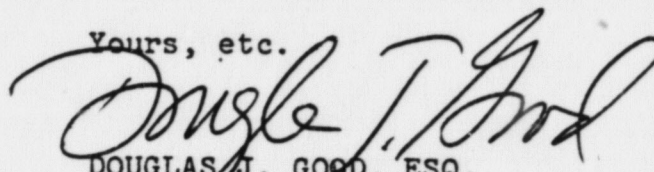
SIRS:

PLEASE TAKE NOTICE, that upon the annexed affidavits of Rene H. Reixach, Esq., and James Reynolds, and all prior proceedings herein, the plaintiffs will move this Court before the Hon. Marvin E. Frankel, at the United States Courthouse, Foley Square, New York, New York, at 10:00 o'clock in the forenoon on the 7th day of ~~June~~^{July}, 1975, or as soon thereafter as counsel can be heard, for an Order pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure determining that this action be maintained as a class action under Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure, and for such other and further relief as seems proper and just.

Dated: May 29, 1975

PLAINTIFFS' NOTICE OF MOTION FOR CLASS ACTION DETERMINATION

Yours, etc.



DOUGLAS J. GOOD, ESQ.
ALTON L. ABROMOWITZ, ESQ.
LEGAL AID SOCIETY OF
ROCKLAND COUNTY, INC.
2 Congers Road
P.O. Box 314
New City, New York 10956
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RENE H. REIXACH, ESQ.
MARGARET MAHONEY, ESQ.
GREATER UP-STATE LAW PROJECT
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Attorneys for Plaintiffs

TO: HON. LOUIS J. LEFKOWITZ
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Attorneys for Defendants

AFFIDAVIT OF RENE H. REIXACH, SWORN TO MAY 19, 1975, IN SUPPORT
OF CLASS ACTION DETERMINATION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARION AITCHISON, et al.,

Plaintiffs,

-against-

ABE LAVINE, et al.,

Defendants.

75 Civ. 1224
MEF

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

RENE H. REIXACH, being duly sworn, deposes and says:

1. I am a member of the bar of this Court and one of the attorneys for the plaintiffs; I make this affidavit in support of the plaintiffs' motion for a determination that this action be maintained as a class action under Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure.

THE NATURE OF THE CASE

2. The plaintiffs are challenging the validity of New York's schedules for determining the amounts of income persons are allowed to meet their non-medical needs under New York's medical assistance "medicaid" program. A copy of the complaint is annexed hereto as Exhibit "A."

3. The plaintiffs are allowed \$107.00 per month less on which to live than if they were on public assistance. The husband of the plaintiff Marion Aitchison is in a nursing home

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and his wife and children are allowed \$333.00 per month to meet their own needs under New York's medical assistance program. If they were receiving public assistance their needs would be \$440.00 per month, or \$107.00 per month more than the amount allowed them under medicaid.

4. They contend that the tables of exempt income in New York Social Services Law section 366.2(a)(8) and 18 N.Y.C.R.R. section 360.5(e) are unconstitutional insofar as they are less than the applicable public assistance standards for persons having the same family composition and shelter expenses. The plaintiffs also contend that to the extent those tables are less than the applicable public assistance standards they are unlawful, being below the most liberal money payment standard used as a measure of financial eligibility in any categorical money payment program, in violation of 45 C.F.R. sections 248.21(a)(3)(1)(b) and 248.21(a)(3)(1)(c); and the plaintiffs further contend that such standards are not reasonable, in violation of 42 U.S.C. section 1396a(a)(17)).

DEFINITION OF THE CLASS

5. The plaintiffs seek to represent the following class, as defined in paragraph 7 of their complaint: all medically needy persons in the State of New York who are required by the defendants or any local department of social services to live on a monthly income allowance which is below the level of need for

AFFIDAVIT OF RENE H. REINACH, SWORN TO MAY 19, 1975, IN SUPPORT
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public assistance for a family of the same size, with the same
expenses for rent, in the particular county.

RULE 23(a)(1) - NUMEROSITY

6. Rule 23(a)(1) of the Federal Rules of Civil Procedure requires that "the class is so numerous that joinder of all members is impracticable;" that standard is amply met here.

7. On information and belief, based on "Social Statistics," Vol. 37 no. 1, January, 1975, published by the Department of Social Services of the State of New York, of which the defendant Abe Lavine is Commissioner, in January, 1975, there were 185,083 persons in New York receiving medical assistance who were not also receiving public assistance (Table 5, p.4; copy annexed as Exhibit "B").

8. The medical assistance tables of allowances in Social Services Law section 366.2(a)(8) and 18 N.Y.C.R.R. section 360.5(e) which are challenged are set forth below, on both an annual and monthly basis:

	1	2	3	4	5	6	7	8
Annual income	\$2500	3400	4000	5000	5700	6400	7200	7800
Monthly income	208	283	333	417	475	533	600	650

9. The class includes all persons whose monthly level of need under public assistance would be higher than the monthly income limit under the table set out in paragraph 8 above. For example, in the case of the named plaintiffs, a family of three,

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they are members of the class since their monthly public assistance level of need would be in excess of \$333.00, the amount allowed a family of three under the challenged table. Their monthly standard of need would in fact be \$440.00, some \$107.00 higher than allowed under the medical assistance tables.

10. The public assistance level of need in New York is a total of several items: a standardized state-wide basic allowance designed to meet needs such as food, clothing and the like; an allowance for rent up to a maximum amount based on a rent schedule filed by each local department of social services with the State Department of Social Services; and, where the rent does not include heat, an additional allowance for fuel for heating which varies depending on the county of residence pursuant to 18 N.Y.C.R.R. section 352.5(a).

11. The basic allowance for a family is set out in New York Social Services Law section 131-a(3) and 18 N.Y.C.R.R. section 352.2(e). In the case of the plaintiffs, a family of three, the basic allowance is \$200.00 per month.

12. In Rockland County the maximum rent allowance for a family of three where heat is included in the rent is \$243.00. The plaintiffs' rent (including heat) is \$240.00. Thus their total allowance would be the sum of \$200.00 and \$240.00, or \$440.00 per month.

13. It is thus apparent that in order to determine the scope of the class the levels of allowance for rent and heat,

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on a county basis, added to the basic allowance, must be compared to the medical assistance tables of allowances. The class includes all those persons whose public assistance allowance (basic + rent + heat) exceeds the medical assistance allowance. They may be required to live below the public assistance level if they are required to live at the levels of the challenged medicaid allowances.

14. Based upon information about the rent allowances in each county which I obtained from the New York State Department of Social Services in early March, 1975, James Reynolds, a VISTA paralegal employed in my office, has completed a series of charts to show in what counties, and what sizes of family in those counties, are potential class members. A copy of a chart I obtained from the New York State Department of Social Services showing those rent allowances is annexed as Exhibit "C". The methodology used by Mr. Reynolds, which I devised, is as follows:

- a) The basic allowance portion of the public assistance allowance being fixed uniformly state-wide, based on family size, and the medical assistance standard likewise being the same state-wide based on family size, a standard figure by which the medical assistance standard exceeds the public assistance basic

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allowance can be calculated for all family sizes. This is shown in column 5 of the charts annexed to Mr. Reynolds' affidavit, and is the difference between the basic allowances set forth in New York Social Services Law section 131(a)(3) and 18 N.Y.C.R.R. section 352.2(e) and the comparable medical assistance standards set forth in New York Social Services Law section 366.2(a)(8) and 18 N.Y.C.R.R. section 360.5(e) (the medical assistance annual amounts having been divided by twelve and rounded to the nearest whole dollar to provide a monthly allowance). A chart showing those calculations is annexed as Exhibit "D". The chart does not cover families of over eight people because by that point the public assistance basic allowance and the medical assistance standard each increase by a fixed amount of \$50.00 per month for each additional family member, so the difference remains the same thereafter.

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- b) Since the public assistance standard of need also includes shelter allowances (rent and heat), a comparison of those shelter allowances with the amounts in column 5 of the charts annexed to Mr. Reynolds' affidavit will identify those categories of families where the medical assistance standard is less than the possible total public assistance allowance. For example, where the medical assistance standard of need exceeds the basic public assistance allowance by \$133.00 per month (families of two or three people), if the shelter allowance is more than \$133.00 per month the total public assistance can exceed the medical assistance standard. Where it does, the person whose medical assistance standard is less than would be his public assistance needs is a member of the class.
- c) Accordingly, Mr. Reynolds made a comparison, by county, between the shelter allowance and the column 5 figure

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for the difference between the medical assistance standard and the public assistance basic allowance for each family size. Since there are two types of shelter allowance, one where the rent includes heat, and one where the heat is not included in the rent, two separate shelter allowances exist for each county. In column 3 of the chart is the shelter allowance composed of the separate components of rent and heat, and in column 4 is the shelter allowance where the heat is included in the rent.

- d) By comparing the amounts for shelter allowances in columns 3 and 4 with the figures in column 5 the categories of persons whose medical assistance standard can be below their public assistance standard can be identified. If the amount in column 3 or 4 exceeds the amount in column 5 the family may be required to live at a lower medical assistance standard than the applicable public assistance standard. If a

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person's actual rent or rent plus heat is less than the maximum allowances therefor they might, of course, be at a public assistance level below that of the medical assistance standard. The size of the gap and its widespread existence, however, demonstrate that there are numerous persons who would be at a public assistance level higher than the medical assistance level.

- e) Where no figure in column 3 or 4 for a particular county is circled on the forms annexed to Mr. Reynolds' affidavit the public assistance allowance can be higher than the medical assistance standard, and that is usually the case. Only where a figure in column 3 or 4 for a particular county is circled could a family never receive public assistance at a level higher than the medical assistance standard.

15. In 16 counties plus all of New York City the schedule is high enough that for all family sizes and rental arrangements the medical assistance standard is below the maxi-

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mum public assistance allowance. Those counties are largely the urban counties, or part of the New York City urban area; they are: Albany, Broome, Dutchess, Herkimer, Monroe, Nassau, Onondaga, Orange, Putnam, Rockland, Saratoga, Suffolk, Sullivan, Tompkins, Ulster, and Westchester (plus New York City).

16. According to "Social Statistics," Volume XXXVII, No. 1, January, 1975, Table 5, p.4, published by the New York State Department of Social Services (Exhibit "B" annexed), there were in January, 1975, in the state outside of New York City 120,079 recipients of medical assistance who were not also recipients of public assistance. The 16 counties identified in paragraph 15 above had 62,875 such recipients, or over 52 percent of the total. When added to New York City, with 65,004 recipients of medical assistance alone, there are a total of 127,879 persons in New York in areas where the public assistance allowance can exceed the medical assistance allowance no matter what the family size. That is over 69 percent of the total number of people in the state receiving medical assistance but not public assistance as well.

17. In another 32 counties some, but not all, family sizes can be subject to lower medical assistance standards than public assistance allowances. In only seven counties are all persons at all family sizes assured that the medical assistance standard will not be lower than the public assistance allowance. Those seven counties, Clinton, Franklin, Jefferson, Lewis,

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Livingston, Rensselaer, and Warren contain only a total of 9,632 persons receiving medical assistance without public assistance, about 5.2 percent of the state total. (Two counties, Wyoming and Yates, have rent levels which were not ascertainable from the data provided by the State, but inasmuch as in January, 1975 they contained only 577 persons receiving medical assistance but not public assistance their omission does not seriously affect the total results).

18. The size of the gap between the medical assistance standard and the public assistance allowance is so substantial in the counties in the New York City area that substantial numbers of persons must perforce fall into that gap. In Nassau County, for example, the monthly gap is at least \$30.00, for a single person not paying separate heat bills, and it increases to \$226.00 per month for a family of 8 paying their own heat bill. In Rockland County, where the plaintiffs reside, the monthly gap ranges from \$50.00 for a single person paying his own heat bills, to \$211.00 for a family of 8 paying their own heat.

19. It is apparent that in most of New York's counties, where most of the persons reside who receive medical assistance but not cash public assistance, the medical assistance standards are lower for most families than the comparable public assistance allowances. All of the people in New York who fall into this gap between the public assistance and medical assistance standards are members of a class which totals in the thousands, plainly a group so numerous that joinder would be impracticable.

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RULE 23(a)(2) -- COMMON QUESTIONS

20. Rule 23(a)(2) of the Federal Rules of Civil Procedure requires as a prerequisite to the maintenance of a class action that there be "questions of law or fact common to the class." Here those questions are the ones raised by the plaintiffs' several statements of claim, namely: Does requiring the class members to exist at a level below the public assistance level violate equal protection? Does requiring the class members to exist at a level below the public assistance level violate federal law and regulations governing the medical assistance program? Plainly these are questions of law common to the class.

RULES 23(a)(3) and (4) --
TYPICALITY AND ADEQUATE REPRESENTATION

21. Rule 23(a)(3) requires that the claims of the representative parties be "typical of the claims ... of the class" and Rule 23(a)(4) requires a showing that "the representative parties will fairly and adequately protect the interests of the class." It is difficult to differentiate between the requirements of typicality and adequacy of representation, since they both concern possible conflicting claims among the class. Suffice it to say that there are no such conflicts here. All of the class members would benefit if the amount of money they were allowed to retain for non-medical purposes was increased as required if the medical assistance standards were brought up to the public assistance level.

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22. So too, the named plaintiffs have an adequate personal stake in this case. They are being required to live on \$107.00 less each month, \$1284.00 less per year, than if the medical assistance schedule were increased to the levels alleged to be required. That is over 1/3 of their current level of allowance and plainly is a large amount of their meagre budget.

23. Adequacy of representation is also assured by the fact that plaintiffs' counsel are experienced both in the substantive area of welfare law as well as in class actions and are full time employees of Legal Services Programs. Plaintiffs' counsel from the Legal Aid Society of Rockland County have successfully represented petitioners in public assistance cases in the New York Supreme Court and Court of Appeals, e.g. Granata v. Lavine, 80 Misc. 2d 170 (Sup. Ct. Rockland Co. 1974); Norton v. Lavine, 74 Misc. 2d 590 (Sup. Ct. Rockland Co. 1973); Knowles v. Lavine, 34 N.Y. 2d 721 (1974). I personally have been one of the counsel for the plaintiffs' class in Frost v. Weinberger, 375 F.Supp. 1312 (E.D.N.Y. 1974), affirmed as to class action but reversed on the merits 2d Cir. dkt. no. 74-2020 (Apr. 17, 1975), a case involving Social Security survivors' benefits, as well as counsel for defendants in several commercial class actions, e.g. Cotchett v. Avis Rent a Car System, Inc., 56 F.R.D. 549 (S.D.N.Y. 1972); Steingart v. The Equitable Life Assurance Society of the United States, 366 F.Supp. 790 (S.D.N.Y. 1973) (reported on non-class action issue). The plaintiffs have also made their class action

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motion on a timely basis and are proceeding promptly to bring about a result favorable to the class.

24. In their answers, copies of which are annexed hereto as Exhibits "E" and "F" the defendants have asserted that the plaintiffs lack standing because of certain insurance policies held by them, and the receipt of Social Security benefits during October, 1973. Standing of the named plaintiffs, and their membership in the class, is part of adequacy of representation. The fact is that these factors do not affect the plaintiffs' standing at all.

25. The defendant Lavine in paragraph 8 of his answer (Exhibit "E"), refers to two life insurance policies in the amount of \$6,000.00 and \$1,000.00, and the defendant Weinberg in paragraph 19 of his answer (Exhibit "F") refers to policies in the amount of \$600.00 and \$1,000.00 which he alleges on information and belief to be "greater than the burial reserve which should be permitted in such matters." That allegation completely ignores the fact, previously pointed out in paragraph 11 of the defendant Weinberg's answer (Exhibit "F"), that there is not only a burial reserve of \$500.00 per person, or \$1,500.00 for the three plaintiffs and \$2,000.00 including the disabled Mr. Aitchison, but also a "savings exemption which increases with the size of the family." That reserve is provided for under 18 N.Y.C.R.R. 360.7(a)(4) and is one-half of the income reserve in regulation

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360.7(a)(5). Thus for the three plaintiffs the savings reserve is \$2,500.00, as the defendant Weinberg has conceded, since Mr. Aitchison must be included pursuant to regulation 360.5(e).

26. Accordingly, even based on the lower reserves allowed for a family of three, like the plaintiffs, there is a \$1,500.00 burial reserve and a \$2,500.00 savings reserve, or a total reserve of \$4,000.00. For a family of four the reserve, as the defendant Weinberg likewise admits, is \$4,500.00. Moreover, the true nature of these insurance policies is evident from a copy of the medical assistance form used by the local department of social services headed by the defendant Weinberg. A copy of this form, supplied from the files of the Legal Aid Society of Rockland County, Inc., is annexed as Exhibit "G." It shows that there is a \$6,000.00 group life policy with no cash value, plus two other policies with a cash value together of \$2,204.00. Suffice it to say that \$2,204.00 is much less than either the \$4,000.00 or \$4,500.00 reserve figure allowable here. Indeed, that form plainly shows in Section B that the "Available Resources" are zero.

27. As for the Social Security payment made on or about October 3, 1973, the defendants' contentions are equally off the mark. As the answer of the defendant Weinberg admits, the plaintiff has asserted that she used that money to pay a debt to her brother "and produced a cancelled check bearing date of October 8, 1973 in proof thereof." (Exhibit F, ¶17). There is

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absolutely no showing that the adult plaintiff did not in fact pay over all of that lump sum Social Security check in October, 1973. As of that payment, of course, the proceeds of that payment ceased to be a resource of the plaintiffs.

28. The assertion by the defendant Lavine in paragraph 9 of his answer (Exhibit "D"), that the plaintiffs' resources are in excess of the \$333.00 amount alleged by her is equally ill-conceived, for it confuses resources with income. This case concerns the monthly income limit of \$333.00 per month, not resource limitations like those for burial or savings reserves. The plaintiffs are challenging the income limits under section 366.2(a)(8) of the Social Services Law and 18 N.Y.C.R.R. 360.5(e), not the resource limits such as those set forth in sections 366.2(a)(3) and (4) of the Social Services Law and 18 N.Y.C.R.R. 360.7(a)(3) and (4). The distinction is, of course, reflected on the worksheet form (Exhibit "G"), between section B "Available Resources" and Section C "Monthly Income Available for Contribution Towards Cost of Medical Care," under which the \$333.00 "Monthly Income Exemption" is shown on line 2.

29. That these alleged resources have absolutely nothing to do with the determination made by the defendants in this case is further evident from the fact that the underlying decision was made on October 17, 1974, over a year after the Social Security lump sum payment had been spent. There is no reference to that sum, or to any insurance policies in the fair hearing decision of the defendant Lavine which is Exhibit "A" to the complaint. That is understandable since neither subject was ever

AFFIDAVIT OF RENE H. REIXACH, SWORN TO MAY 19, 1975, IN SUPPORT
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raised at the fair hearing - - a copy of the transcript of that fair hearing is annexed hereto as Exhibit "H." It is obvious that these allegations by the defendants are mere afterthoughts having absolutely nothing to do with the challenged determinations and policies, and indeed, having no merit at all.

30. Since the filing of the complaint therein the plaintiff Michael Aitchison has become employed, so he is no longer dependent upon his parents but rather self-supporting, and indeed he is paying his mother for room and board. While the plaintiffs' income allowance under the medical assistance program may thus be recomputed, at most the change should be to treat Michael Aitchison as a self-supporting person not responsible to support his parents or sister, so that the plaintiffs Marion Aitchison and her daughter Janice Aitchison would be considered to be a family of two rather than a family of three.

31. That change does not affect this action, for the two person medical assistance income allowance of \$283.00 per month set out in section 366.2(a)(8) of the Social Services Law is less than the applicable public assistance level for such a family of two, which is \$344.00 per month (the basic allowance is \$150.00 per month pursuant to section 131-a(3) of the Social Services Law and 18 N.Y.C.R.R. 352.2(e) and the rental allowance for rent including heat in Rockland County is \$194.00 for two people). Thus the plaintiffs Marion Aitchison and Janice Aitchison would still be required to live below the public assistance level, as a two person

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family \$61.00 per month below the public assistance level.

RULE 23(b)(2) -
INJUNCTIVE OR DECLARATORY RELIEF

32. Rule 23(b)(2) of the Federal Rules of Civil Procedure provides that an action may be maintained as a class action if, in addition to meeting the requirements of Rule 23(a),

the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive or corresponding declaratory relief with respect to the class as a whole.

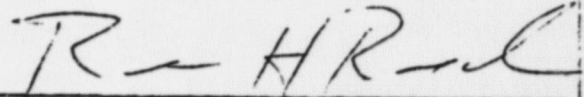
33. Here the defendant State Commissioner Abe Lavine has promulgated regulations which provide for medical assistance eligibility standards which must be followed by all local commissioners of social services throughout New York State, who act under the direction and supervision of, and as agents of, the State Commissioner.

34. Thus the defendants, by relying on the challenged statute and regulation (and the State Commissioner by promulgating such regulation) have acted on grounds generally applicable to the class. They are applying a uniform policy which violates federal law and regulations and the Constitution. Accordingly, final injunctive or declaratory relief is appropriate.

35. All of the prerequisites for the maintenance of this action on behalf of a class have been met, so class action status should be granted.

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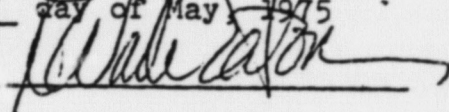
WHEREFORE, deponent prays that the plaintiffs' motion
for an order determining that this action be maintained as a class
action be granted.



RENE H. REIXACH

Sworn to before me this

19th day of May, 1975



K. WADE EATON

Notary Public in the State of New York

MONROE COUNTY, N. Y.

Commission Expires March 30, 1976

TABLE SHOWING NUMBER OF MEDICAL ASSISTANCE RECIPIENTS AND EXPENDITURES
IN NEW YORK STATE, EXHIBIT B TO REIXACH AFFIDAVIT OF MAY 19

Table 5
MEDICAL ASSISTANCE
Beneficiaries, expenditures and average payment, by social services district
January 1975

Social services district	Beneficiaries			Medical expenditures	Average payment per beneficiary
	Total	Subsistence and Medical	Medical Only		
New York State	1,024,904	839,821	185,083	\$238,795,992	\$232.99
New York City	675,656	610,652	65,004	172,009,803	254.58
Rest of State	349,248	229,169	120,079	66,786,189	191.23
Large Urban Counties	194,232	136,912	57,320	39,074,445	201.17
Erie	43,372	28,245	15,137	6,288,040	144.95
Monroe	20,311	15,021	5,290	4,009,843	197.42
Nassau	36,137	25,964	10,173	13,936,347	385.65
Onondaga	15,597	12,386	3,211	2,889,045	185.23
Suffolk	37,686	22,297	15,389	4,923,629	130.65
Westchester	41,119	32,999	8,120	7,027,541	170.91
Other Counties	155,016	92,257	62,759	27,711,744	178.77
Albany	9,143	6,033	3,110	2,168,656	237.19
Allegany	1,883	1,201	682	288,324	153.12
Broome	7,713	4,849	2,864	1,925,118	249.59
Cattaraugus	1,873	1,117	756	166,390	88.84
Cayuga	3,706	2,564	1,142	730,801	197.19
Chautauque	5,450	3,881	1,569	1,038,710	190.59
Chemung	4,326	3,613	1,313	613,947	141.92
Chenango	2,360	1,187	1,173	264,585	112.11
Clinton	4,122	889	3,233	371,232	90.06
Columbia	1,501	749	752	261,793	174.41
Cortland	2,099	1,269	830	229,164	109.18
Delaware	1,173	627	546	222,218	189.44
Dutchess	4,417	2,357	2,060	854,103	193.37
Essex	2,461	1,439	1,022	344,406	139.95
Franklin	2,882	1,696	1,186	401,746	139.40
Fulton	1,648	906	742	358,136	217.32
Genesee	1,210	884	326	277,177	229.07
Greene	1,664	1,058	606	387,782	233.04
Hamilton	215	131	84	20,246	94.17
Herkimer	1,931	928	1,003	327,401	169.55
Jefferson	4,277	2,678	1,599	757,644	177.14
Lewis	966	447	519	147,522	152.71
Livingston	1,115	727	418	189,143	165.19
Madison	2,831	1,921	910	277,735	98.10
Montgomery	1,295	660	435	215,863	166.69
Niagara	4,995	3,649	1,346	1,242,279	248.70
Oneida	10,787	6,373	4,414	1,716,320	159.11
Cattaraugus	1,832	579	1,253	338,157	184.58
Orange	7,544	5,507	2,037	1,336,042	177.10
Orleans	2,007	1,002	1,005	258,620	118.89
Oswego	3,890	2,507	1,383	475,397	122.21
Otsego	1,840	1,054	786	293,213	159.35
Putnam	946	501	445	255,872	270.48
Rensselaer	4,351	2,640	1,711	805,363	185.20
Rockland	8,225	3,884	4,341	1,958,048	238.06
St. Lawrence	5,546	3,383	2,163	740,313	133.49
Saratoga	2,540	1,000	1,534	537,216	211.50
Schenectady	4,936	2,950	1,986	1,351,368	273.78
Schoharie	324	140	364	58,008	179.70
Schuyler	635	365	270	102,645	161.65
Seneca	771	469	302	125,247	162.45
Stauben	3,393	2,004	1,389	447,572	131.91
Sullivan	2,616	1,583	1,033	605,789	231.57
Tioga	1,620	799	821	229,985	141.97
Tremont	2,566	1,846	720	330,594	128.84
Ulster	3,651	2,106	1,545	682,972	187.06
Warren	2,044	1,078	966	281,061	137.51
Washington	2,059	1,209	850	306,625	148.92
Wayne	2,215	1,577	638	306,468	138.36
Wyoming	588	275	313	23,867	40.59
Yates	604	340	264	82,861	137.19

Exhibit B
-62-

TABLE SHOWING DIFFERENCES BETWEEN MEDICAL ASSISTANCE EXEMPT INCOME LEVELS [NYSSL § 366 (2) (a) (8)] AND PUBLIC ASSISTANCE GRANTS FOR BASIC NEEDS EXCLUDING SHELTER [NYSSL § 131-a(3)], EXHIBIT D TO REIXACH AFFIDAVIT OF FAMILY SIZE MAY 19

	1	2	3	4	5	6	7	8
Monthly medical assistance (see ¶8, <u>supra</u>)	\$208	283	333	417	475	533	600	650
Basic Monthly allowance	94	150	200	258	318	368	418	468
Differential for comparison to shelter allowance	114	133	133	159	157	165	182	182

EXHIBIT "D"

-63-

GEORGE AITCHISON MEDICAL ASSISTANCE BUDGET WORKSHEET, EXHIBIT G TO REIXACH
AFFIDAVIT OF MAY 19

New York

(is being completed for responsible relative, check and enter name and address of such relative below.)

Applicant's Name

AITCHISON GEORGE

Case Number

31387

No. in Family (inc. person in chronic care)

4

Period

Income Exemption

Savings Exemption

Pers. Allow. Chronic Care

No. of Wage Earners

Annual

4000

5000

Person in Family rec. chronic care

☒ Yes ☐ No

Monthly

333

2850

Section A. INCOME AND DEDUCTIONS OF HOUSEHOLD (From Form DSS-515 - Formerly MA-11)

NAME (only those reporting on Form MA-11)	Gross Income		Annual Equiv. of Column 2	1. Include as gross income any room and board income in excess of \$1080/annum; \$90/mo; \$21/week. 2. If the total in Col. 4 is less than the annual income exemption, do not complete Sec. C. 3. Persons in chronic care who receive less than \$17/month for a personal allowance are eligible, upon application, for a grant of assistance. (See Bulletin 182, Department Regulation 30.19.)	Amounts Shown in Col. 2	Deductions From Wages		Column 5 Less Total of Col. 6 and Col. 7	Monthly Equiv. of Column 8
	Amount	Pct.				Health Insurance	Income Taxes		
1	2	3	4		5	6	7	8	9
Western Elec. P.	277.50	M							277.50
ORST dist.	110.00	M							110.00
"	110.00	M							110.00
Ad dist.	236.90	M							236.90
from Hqs.	92.50								92.50
TOTAL OF COL. 4									(a) 897.08

Section B. AVAILABLE RESOURCES

VALUE OF LIFE INSURANCE

Person's Name (List Each Policy Separately)	Total Face Value	Total Cash Value
1	2	3
So. Equitable Life	6000	-
W. State Natl Life	5000	1690
Union John Hancock	1000	514

Allowable Deductions Not Deducted From Wages

Actual

Per.

Monthly Equiv.

Health Insurance

no charge

Income Taxes

Court Payments

Total Monthly Equiv. (b)

Section C.

MONTHLY INCOME AVAILABLE FOR CONTRIBUTION TOWARDS COST OF MEDICAL CARE

1. Monthly Net Income (From Section A, Line (a) less Line (b))	127.08
2. Monthly Income Exemption	333.00
3. Monthly Income Disregarded	
4. Pers. Allowance Chronic Care	2850
5. Total (Line 2+3+4)	361.50
6. Available Monthly Income (Line 1 less Line 5)	465.58
	- 92.50
	372.99
	- 236.90
	136.09

Bank Accounts	Empire Natl checking acct.	1. 2204
on-homestead Property		2. 101.00
Other Liquid Assets		3.
Total Resources (Line 1+2+3+4)		4. 2305.06
Burial Reserve (No. in family x \$500) (Maximum \$2,000)	2000	
Allowable Savings Exemption	2500	
Total Exemption (Line 6 + Line 7)	4500	
Available Resources (Line 5 less Line 8)	705.06	

Section D. CATASTROPHIC ILLNESS - COMPUTATION OF ELIGIBILITY (Person Not Federally Related)

Net Income from Section C, Line 1 x 12 =	A \$	x 25%	\$	Amount to be Paid by Applicant for Catastrophic Illness
Subtract PA Standard (Annual)	B \$			LESSER AMOUNT
Excess over PA Standard	C \$			Exhibit G

State of New York
Department of Social Services

x - - - - - x
|
| In the Matter of the Appeal of |
|
| MARION AITCHISON |
|
| From a Determination by the Rockland County |
| Department of Social Services |
| relating to the adequacy of medical |
| assistance. |
|
|
|
x - - - - - x

DATE OF HEARING: November 14, 1974

PLACE OF HEARING: Pomona, New York

BEFORE: WILLIAM MEYERS
Hearing Officer

REPORTED BY: Joseph D'Ambrosio
Hearing Reporter

APPEARANCES:

APPELLANT

Marion Aitchison
Kathleen Batwinas
Alton Abramowitz

Appellant
Daughter of Appellant
Representative

ROCKLAND COUNTY DEPARTMENT OF SOCIAL SERVICES
Robert Berlin Representative

FAIR HEARING TRANSCRIPT

THE HEARING OFFICER: My name is William R. Meyers, I have been designated by the Commission of Social Services to conduct this hearing, which relates to an appeal by one Marion Aitchison, who is appealing from an adverse determination by the agency with specific reference to the adequacy of medical assistance. Is that the problem?

MR. ABRAMOWITZ: Yes.

THE HEARING OFFICER: There will be a verbatim transcript kept of the record of the proceeding, and both parties will be permitted to present documents. Witnesses will be questioned and cross-examined, and if I deem it appropriate there may be rebuttal. As a result of the hearing, there will be a decision issued by the State Commissioner of Social Services, which will be binding on both parties, and copies of which decision will be given to both parties. Now, let the record note that this involves an agency determination. Therefore, I ask that Mr. Berlin present the agency's case first. However, preliminary to this hearing, the Hearing Officer has been advised that the appellant had been in receipt of medical assistance since September 6, 1972 and the family household consists of the appellant, age fifty-three, her husband, age forty-nine, and their two children, ranging in ages eighteen to twenty years. I had them reversed. Okay, alright, so you're forty-nine and your husband is fifty-three?

AIR HEARING TRANSCRIPT

MRS. AITCHISON: Right.

THE HEARING OFFICER: And the two children's age is eighteen to twenty, the older child being a full time student. These facts are correct?

MR. ABRAMOWITZ: Yes.

THE HEARING OFFICER: And Mr. Berlin?

MR. BERLIN: Yes.

THE HEARING OFFICER: Now, would you explain the agency determination concerning this medical assistance matter?

MR. BERLIN: I'd like to introduce a Notice of Acceptance in a nursing home --- acceptance --- a Notice of Acceptance in a nursing home.

THE HEARING OFFICER: Any objection?

MR. ABRAMOWITZ: No objection.

THE HEARING OFFICER: The Notice of Acceptance for medical assistance in a nursing home, addressed to the appellant from the agency, and dated October 17, 1974 is received into evidence, marked Agency's Exhibit 'A'.
Off the record.

(Whereupon the record was closed.)

There has been a brief recess for allowing the Hearing Officer to accept a telephone call.

Now, we have just received the Notice of Intent --- the Notice of Acceptance for a nursing home. How long has Mr. Aitchison been in a nursing home?

MRS. AITCHISON: Two and a half years --- almost two and a half years.

FAIR HEARING TRANSCRIPT

THE HEARING OFFICER: Two and a half years?

MR. BERLIN: Let the record indicate he
certified as an AD group 1.

THE HEARING OFFICER: So, he is now getting
SSI?

MR. BERLIN: No.

THE HEARING OFFICER: That's right --

MR. BERLIN: It's MA.

THE HEARING OFFICER: He gets Social Security?

MR. BERLIN: Yes. He gets Social Security,
and he gets a pension.

THE HEARING OFFICER: Okay, go ahead.

MR. BERLIN: I'd like to introduce for
reference purposes, the budget worksheet.

THE HEARING OFFICER: Okay.

MR. BERLIN: Just to calculate --

THE HEARING OFFICER: Okay, I'll leave it
in the file for reference in connection with your testimony

MR. BERLIN: Now, I'd like to refer to that
budget worksheet to show we calculated the amount of
contributions that Mr. Aitchison is supposed to make
to the nursing home. Section A, income, Mr. Aitchison
is receiving a pension from Western Electric of \$277.59
a month. His wife, Marion, is receiving Social Security
in the amount of \$110.10. The budget worksheet indicates
that Janice, I believe, that both children are receiving
a total of \$110.10 in Social Security. Mr. Aitchison is
receiving Social Security disability in the amount

FAIR HEARING TRANSCRIPT

of \$256.30, and there is also income from a mortgage in the amount of \$92.59 a month. There is a total of \$846.68. There are no health insurance premiums, income tax, support payments, or any of that being deducted from this amount, and in accordance with Department Regulations, when an individual is in chronic care, the allowance would be based on the three, so it would be monthly income exemptions of \$333. He also being in chronic care — out of person, he is also allowed a personal allowance in chronic care of \$28.50. The agency determined that he has available monthly income of \$485.18. Of this, \$256.30 which represents the amount of Social Security disability and the \$92.59, his mortgage income is received directly by the nursing home. The agency additionally deducted \$20.80 which is a transportation allowance. This allows a total contribution to the balance of the contribution to the nursing home of \$115.49, to the nursing home. I have nothing further.

THE HEARING OFFICER: Off the record.

(Whereupon the record was closed)

Back on the record. Now, so that based on what you have told me, the Social Security income that is received on behalf of the children, this presumably comes to the appellant as payee?

MR. BERLIN: I believe this check goes — it does not go to the nursing home, it goes to the home of the appellant.

THE HEARING OFFICER: I mean, is it to the

FAIR HEARING TRANSCRIPT

appellant or her husband, as payee and then for the children?

MR. BERLIN: Yes. For the children.

THE HEARING OFFICER: Okay.

MR. BERLIN: In this case, the payee is Marion.

THE HEARING OFFICER: Okay, now, do you have anything further to tell me?

MR. BERLIN: I have nothing further at this time.

THE HEARING OFFICER: Mr. Abramowitz, I will ask you to present your case in a moment. However, with regard to what I've heard from Mr. Berlin, do you have any questions you desire to ask him?

MR. ABRAMOWITZ: Yes, I do.

THE HEARING OFFICER: Okay, go ahead.

MR. ABRAMOWITZ: Mr. Berlin, are you familiar with the standard of need which the State applies to families applying for public assistance in New York State?

MR. BERLIN: Yes, sir.

MR. ABRAMOWITZ: Alright, in a household of this size, of Mrs. Aitchison's, excluding her husband for a moment, would the maintenance allowance be the full \$200 a month for three people?

MR. BERLIN: Yes.

MR. ABRAMOWITZ: And would they receive a shelter allowance of \$243 toward their rent?

MR. BERLIN: I believe if the rent is in excess of \$243, they would receive up to that amount.

FAIR HEARING TRANSCRIPT

If it is less, they would receive less.

MR. ABRAMOWITZ: Okay, so in effect, they would be entitled to a total grant of \$440?

MR. BERLIN: Assuming no other sources of income.

MR. ABRAMOWITZ: Yes, okay.

MR. BERLIN: Assuming no other source of income.

MR. ABRAMOWITZ: According to your budget sheet-- your budget worksheet, and your Notice of Acceptance for medical assistance, provides that living in the household shall only be allowed to use \$333 of their entire income. Is that correct?

MR. BERLIN: That is correct. That's based on medical assistance standards for a family of three people.

MR. ABRAMOWITZ: So, in effect, they're being required to provide for themselves on a lower standard -- lower standard than statewide standard of needs for public assistance recipients of a family of three, is this correct?

MR. BERLIN: I have to disagree, because the figure of \$333 takes into account -- actually it is not -- it is being deducted from the income where the figuring of \$443 is a maximum amount and does not include any income being deducted from it. So that you have to apply the income applicable, and make a determination what their actual wants would be before I could --

ANTHONY
FAIR HEARING TRANSCRIPT

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MR. ABRAMOWITZ: Now, you misunderstood my question. If -- disregarding any income for a moment -- if they were recipients of public assistance, that would not effect, at this time--they would not effect at this time, grants of \$440?

MR. BERLIN: Yes.

MR. ABRAMOWITZ: And, based on the figures of your agency, this household of Mrs. Aitchison, her son Michael, and her daughter, Janice, are only being asked to live on a sum total of \$333?

MR. BERLIN: That would be correct.

MR. ABRAMOWITZ: Okay, I have nothing further for Mr. Berlin.

THE HEARING OFFICER: Okay, do you have a witness?

MR. ABRAMOWITZ: Well, if the hearing examiner would, I would rather just present the essence of our case, myself, rather than ask any questions of Mrs. Aitchison. It does not really involve any facts which are in dispute. Essentially, what we're arguing here is that she being required -- she and her two children are being required to live on an amount less than that which a public assistance family would receive, and less than what the State Legislature has found is minimum standard of needs for a family of three persons, approximately \$110 less a month. And what we're arguing, is that they should be required to contribute \$110 less a month toward her husband's medical care in the nursing home. And that

FAIR HEARING TRANSCRIPT

\$110 should be a monthly income exemption for the family.

THE HEARING OFFICER: Well, I have already discussed that in the course of our cross-examination. You have made your point clear as to that fact. However, it may be that Mr. Berlin would have some question of the client, and it may be that there are some facts that I myself, would desire to explore. This is a fact finding hearing. I would assume the purpose is to present the facts. Do you have a witness?

MR. ABRAMOWITZ: Alright, I have Mrs. Aitchison I would like to call.

THE HEARING OFFICER: Okay.

EXAMINATION OF MRS. AITCHISON:
BY MR. ABRAMOWITZ:

Q Mrs. Aitchison, you have heard the testimony of Mr. Berlin?

A Yes.

Q And as to the figures which he has discussed as to your present income, are those figures correct?

A Yes.

Q Okay. Now, are you able to live on \$333 a month that the Department of Social Services allows you and your family to keep?

A Absolutely not.

Q Do you have expenses in excess of \$333 a month?

A Yes, I do.

Q How much is your monthly rent?

A \$240.

Q And you're given — you're allowed to keep \$333 a month by the Department, is that correct?

FAIR HEARING TRANSCRIPT

A Not the way my figures come out.

Q Well, let's see —

A I receive my husband's pension and my own Social Security and my daughter's. Out of that, I have to pay my rent.

Q Okay, and you also make payments to the nursing home out of that, too, correct?

A I'm supposed to, but I have not been able to do that.

MR. ABRAMOWITZ: Okay, I have nothing further of Mrs. Aitchison.

THE HEARING OFFICER: Do you have any questions?

MR. BERLIN: Only one question, if I may, to clarify something. The only child that gets Social Security is Janice, is that correct?

MRS. AITCHISON: It is Janice, but, you see, actually when Michael is going to school he is covered up here. She gets \$110, that's all they issue.

MR. BERLIN: That's the total for two of them?

MRS. AITCHISON: Yes.

MR. BERLIN: But Janice is the only name that appears there?

MRS. AITCHISON: Right.

THE HEARING OFFICER: Alright, nothing else?

MR. BERLIN: Nothing.

THE HEARING OFFICER: Mrs. Aitchison, it's my understanding that you have no income taxes — you didn't pay any state or federal income taxes?

MRS. AITCHISON: No.

THE HEARING OFFICER: You have no health

FAIR HEARING TRANSCRIPT

insurance, like Blue Cross or Blue Shield?

MRS. AITCHISON: Yes, I do. That comes out of my husband's pension.

THE HEARING OFFICER: How much is that?

MRS. AITCHISON: Actually, I don't know what they deducted.

THE HEARING OFFICER: Is that with a commercial carrier?

MRS. AITCHISON: That is Western Electric Company.

THE HEARING OFFICER: So, that the amount that you actually get in the form of the pension is \$277.59 a month?

MRS. AITCHISON: Yes.

THE HEARING OFFICER: Yes. So, that's after the health insurance is taken out?

MRS. AITCHISON: After deductions.

THE HEARING OFFICER: Your husband is certified to be disabled, does he have medicaid?

MRS. AITCHISON: Not yet.

THE HEARING OFFICER: The federal medicare?

MRS. AITCHISON: Not yet.

THE HEARING OFFICER: No.

MRS. AITCHISON: Not until he is sixty-five.

THE HEARING OFFICER: Now, and you have heard that the income from the mortgage and your husband's Social Security go directly to the nursing home to reduce the amount of their bills?

AITCHISON
FAIR HEARING TRANSCRIPT
MRS. AITCHISON: Yes.

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THE HEARING OFFICER: Now, did you at any time apply for public assistance other than medical assistance?

MRS. AITCHISON: No.

THE HEARING OFFICER: Was there any reason why there was no application made for public assistance?

MRS. AITCHISON: Public assistance of what sort?

THE HEARING OFFICER: This would be a cash grant of public assistance which would take into consideration your expenses, such as expenditures for rent during the winter. I would take into consideration expenditures for fuel for heating. There's allowance for all other expenses, including clothes and items of general needs. The legislature, in adopting a medical assistance program, takes into consideration that certain items are deductible. Items such as rent and things of that nature are — by legislation are not included. It could be that if an application was made for public assistance, this could result in a determination in your favor. I will draw no conclusions as to that, at this time because I have indicated there has been no such application. There being nothing further, the hearing is closed. There will be a decision from the Commissioner in Albany. All parties will receive copies of that decision. Thank you for coming.

CERTIFIED TO BE A TRUE AND CORRECT
TRANSCRIPT OF THE MINUTES TAKEN
AT THIS FAIR HEARING.

Joseph D. Ambrosio

AFFIDAVIT OF JAMES REYNOLDS, SWORN TO MAY 19, 1975 IN SUPPORT
OF MOTION FOR CLASS ACTION DETERMINATION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARION AITCHISON, et al.,

Plaintiffs,

-against-

ABE LAVINE, et al.,

Defendants.

75 Civ. 1224
MEF

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

JAMES REYNOLDS, being duly sworn, deposes and says:

1. I am a member of Volunteers in Service to America (VISTA) assigned to the Monroe County Legal Assistance Corporation in Rochester, New York. My duties there are those of a paralegal, including performing factual research assignments at the request and under the direction of attorneys from the Monroe County Legal Assistance Corporation.

2. In March, 1975, Rene H. Reixach, an attorney at the Greater Up-State Law Project of the Monroe County Legal Assistance Corporation, requested that I compute certain data for the purposes of determining the scope of the class in this action. He requested that I make calculations for each county in New York, plus New York City, to compare the shelter allowances for each county and family size with a figure representing the difference between the medical assistance allowances and the basic public assistance allowance for all family sizes.

REYNOLDS AFFIDAVIT

3. Annexed hereto are fifty-eight (58) sheets, one for each county, plus one for the City of New York, upon which I filled in the appropriate data. The amounts filled in under column 1 of those sheets as the rent allowance are those shown on the document which is Exhibit "C" to Mr. Reixach's affidavit of even date, which I have read. The amounts in column 2 for fuel are the amounts for fuel for heating on a 12 month basis from the table set forth in 18 N.Y.C.R.R. section 352.5(a). I added those amounts to arrive at a total shelter allowance shown in column 3 on the fifty-eight (58) sheets. The amounts for rent where heat is included, filled in on column 4, are, like those in column 1, taken from Exhibit "C" to Mr. Reixach's affidavit.

4. Pursuant to the instructions at the bottom of each sheet, I circled all the numbers in columns 3 or 4 which were less than the number in column 5. Thus where a number in column 3 or 4 is circled the medical assistance standard exceeds the public assistance allowance maximum; where a number is not circled the public assistance allowance can be higher than the medical assistance standard.

5. An examination of these fifty-eight (58) sheets demonstrates that in the majority of cases, based on both county and family size, the medical assistance standard is less than the possible public assistance allowance, so the plaintiffs' class is quite numerous.

REYNOLDS AFFIDAVIT

WHEREFORE, I pray that the plaintiffs' motion for an order determining that his action is maintainable as a class action be granted.

James Reynolds
JAMES REYNOLDS

Sworn to before me this

17th day of May, 1975.

[Signature]

K. WADE EATON
Notary Public in the State of New York
MONROE COUNTY, N. Y.
Commission Expires March 30, 1976

[charts deleted. Corrected charts appear
at pp.150-207 of this Appendix.]

STIPULATION DATED JULY 1, 1975, AMENDING COMPLAINT AND MOTION FOR SUMMARY JUDGMENT TO REFER TO 45 C.F.R. § 248.3(c)(1)(ii) INSTEAD OF 45 C.F.R. § 248.21(a)(3)(i)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARION AITCHISON, Individually
and on behalf of MICHAEL AITCHISON
and JANICE AITCHISON, her minor
children, and on behalf of all
other persons similarly situated,

Plaintiffs,

- against -

STIPULATION
75 Civ 1224 (MEF)

ABE LAVINE, as Commissioner of the
Department of Social Services of
the State of New York and NOAH
WEINBERG, as Commissioner of the
Department of Social Services of
Rockland County, New York,

Defendants.

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned attorneys for the parties to this action that plaintiffs' motion pursuant to Rule 56 of the Federal Rules of Civil Procedure, granting plaintiffs summary judgment on their third claim as set forth in their complaint, be adjourned from the 7th day of July, 1975, until the 6th day of August, 1975, and that the defendants shall serve their papers, if any, in answer thereto upon the attorneys for the plaintiffs and file such answers with this Court on or before the 23rd day of July, 1975; and it is further

STIPULATED AND AGREED that plaintiffs' motion pursuant to Rule 23 of the Federal Rules of Civil Procedure be similarly adjourned from the 7th day of July, 1975, until the 6th day of August, 1974, and that the defendants' answering papers, if any, shall be served on the attorneys for the plaintiffs and filed with this Court on or before the 23rd day of July,

STIPULATION AMENDING COMPLAINT AND MOTION
FOR SUMMARY JUDGMENT

1975; and it is further

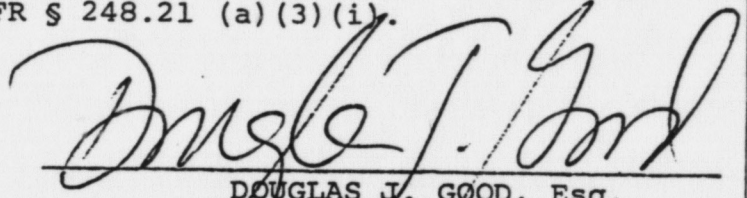
STIPULATED AND AGREED that paragraph 31 of the complaint herein be amended to read as follows:

31. Levels of income for maintenance established by the defendants are less than the higher of the levels of the payment standards generally used as a measure of financial eligibility in the money payment programs in violation of 45 C.F.R. § 248.3 (c)(1)(ii);

and it is further

STIPULATED AND AGREED that plaintiffs' motion for summary judgment above referred to be similarly amended by placing reliance on 45 CFR § 248.3 (c)(1)(ii) instead of 45 CFR § 248.21 (a)(3)(i).

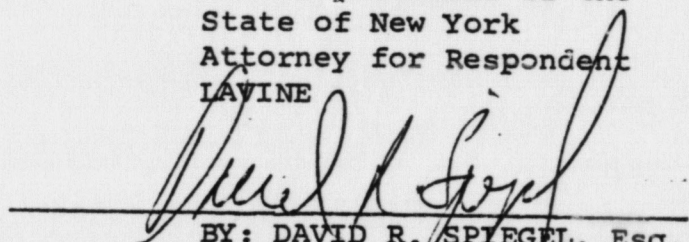
Dated: New City, New York
July 1, 1975



DOUGLAS J. GOOD, Esq.
ALTON L. ABRAMOWITZ, Esq.
LEGAL AID SOCIETY OF
ROCKLAND COUNTY, INC.
Attorneys for Plaintiffs
2 Congers Road
P. O. Box 314
New City, New York 10956
(914) 634-3627

LOUIS J. LEFKOWITZ, Esq.
Attorney General of the
State of New York
Attorney for Respondent
LAVINE

Dated: New York, New York
July , 1975



BY: DAVID R. SPIEGEL, Esq.
2 World Trade Center
New York, New York 10047
(212) 488-7591

STIPULATION AMENDING COMPLAINT AND MOTION
FOR SUMMARY JUDGMENT

DIANA W. RIVET, Esq.
County Attorney
Attorney for Respondent
WEINBERG

Dated: New City, New York
July , 1975

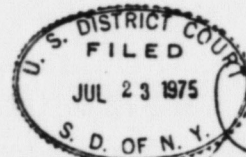
John B. Franklin
BY: JOHN B. FRANKLIN, Esq.
County Office Building
New City, New York 10956
(914) 638-0500

SO ORDERED:

S/ MARVIN E. FRANKEL
MARVIN E. FRANKEL
District Judge

DEFENDANT LAVINE'S NOTICE OF MOTION FOR SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



MARION AITCHISON, individually and on :
behalf of Michael Aitchison and Janice :
Aitchison, her children and on behalf :
of all other persons similarly situated, :

Plaintiffs, :

-against-

ABE LAVINE, individually and as Com- :
missioner of the Department of Social :
Services of the State of New York, and :
NOAH WEINBERG, individually and as :
Commissioner of the Department of Social :
Services of Rockland County, New York :

Defendants. :

Notice of Motion

75 Civ. 1224
(MEF)

PLEASE TAKE NOTICE that upon the accompanying affidavit
of BEVERLEE MEYERS; the attached answer to plaintiffs' Rule 9(g)
statement; the accompanying memorandum of law of defendant
Lavine; plaintiffs' motions and accompanying papers for summary
judgment and for an order declaring this matter to be a class
-action; and upon all other papers and proceedings heretofore
had and filed herein, the undersigned, as counsel for defendant
Lavine will cross-move this Court on August 6, 1975, at the
Courthouse thereof, Foley Square, New York, New York for summary
judgment pursuant to Rule 56(b) of the Federal Rules of Civil
Procedure and for such other relief as this Court may deem
necessary and proper.

Dated: New York, New York
July 22, 1975

Yours etc.,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendant Lavine
By

DAVID R. SPIEGEL
Assistant Attorney General
Office & P.O. Address
Two World Trade Center
New York, New York 10047
Tel. No. (212) 488-7591

ANSWER TO PLAINTIFFS' STATEMENT PURSUANT TO RULE 9(g) IN
SUPPORT OF DEFENDANT LAVINE'S MOTION FOR SUITARY JUDGMENT

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MARION AITCHISON, individually and on :
behalf of Michael Aitchison and Janice :
Aitchison, her children and on behalf :
of all other persons similarly situated, :

Plaintiffs, :

-against- :

ABE LAVINE, individually and as Com- :
missioner of the Department of Social :
Services of the State of New York, and :
NOAH WEINBERG, individually and as :
Commissioner of the Department of Social :
Services of Rockland County, New York :

Defendants. :

ANSWER TO RULE 9(g)
STATEMENT OF
PLAINTIFFS

75 Civ. 1224
(MEL)

Defendant Lavine, for an answer to the Rule 9(g)
statement of plaintiffs, by and through his attorney, LOUIS J.
LEFKOWITZ, Attorney General of the State of New York, respect-
fully alleges:

1. Admits the allegations in paragraphs "1", "2", "3",
"5", "6", "7", "8", and "9" thereof.

2. Admits the allegations in paragraph "4" thereof;
states further that plaintiffs are also permitted to retain
\$28.50 of their total monthly income, for a total of \$361.50,
monthly income.

3. With respect to the allegations in paragraph "10"
thereof, denies to the extent that any dollar amounts are placed
on the amount of medical assistance funds that defendant Lavine
administers; the amount of said fund is not yet in evidence.

4. Alleges in addition that it is also uncontroverted
that:

DEFENDANT LAVINE'S ANSWER TO PLAINTIFFS' 9(g) STATEMENT

a) Plaintiffs receive a total monthly income of \$846.68. Said income consists of the following components: (1) \$256.30 in social security income for Mr. Aitchison; (2) \$92.59 in income from a mortgage; (3) \$277.59 in social security income for Mrs. Aitchison and her dependents; (4) \$220.20 in income from Mr. Aitchison's pension.

b) In addition to her monthly income, plaintiffs received and were permitted to keep a \$2,579.20 social security award paid to her on October 3, 1973 for Mr. Aitchison's disability. Plaintiff Mrs. Aitchison alleges that this check was turned over to a brother in satisfaction of a debt of her husband accruing in 1968.

Dated: New York, New York
July 22, 1975

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendant Lavine
By

DAVID R. SPIEGEL
Assistant Attorney General
Office & P.O. Address
Two World Trade Center
New York, New York 10047
Tel. No. (212) 488-7591

AFFIDAVIT OF BEVERLEE MYERS, SWORN TO JULY 16, 1975, IN OPPOSITION
TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT & CLASS ACTION DETERMINA-
TION & IN SUPPORT OF DEFENDANT LAVINE'S MOTION FOR SUMMARY JUDGMENT
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARION AITCHISON, individually and
on behalf of MICHAEL AITCHISON and
JANICE AITCHISON, her children, and
on behalf of all other persons similarly
situated,

Plaintiffs,

- against -

AFFIDAVIT

75 Civ. 1224

MEF

ABE LAVINE, individually and as Commissioner
of the Department of Social Services of the
State of New York, and NOAH WEINBERG, individ-
ually and as Commissioner of the Department
of Social Services of Rockland County, New York.

Defendants.

STATE OF NEW YORK)

: SS:

COUNTY OF ALBANY)

BEVERLEE MYERS, being duly sworn, deposes and says:

(1) I am the Deputy Commissioner of the Division of Medical Assist-
ance for the New York State Department of Social Services.

(2) I am familiar with New York State's Medical Assistance Program
including those aspects of that program challenged in this lawsuit. This
affidavit is prepared in opposition to plaintiffs' class action motion and
summary judgment motion.

(3) New York State's Medical assistance program is a cooperative
program between the State and Federal governments. Pursuant to 42 U.S.C.
1396, 1396a(b), and 1396b, the Secretary of Health, Education, and Welfare
is authorized to make payments to States which have an approved State plan
for Medical Assistance.

(4) On April 1, 1970, James C. Callison, Regional Commissioner of
Region II, Department of Health, Education and Welfare, approved the State
plan submittal which submitted Section 366.2(a)(8) of the New York Social
Services Law and Board of Social Welfare Rule 85.4(b)(2)(i) for incorporation
into New York's State Plan. Rule 85.4(b)(2)(i) has since been transferred
to the Regulations of the Department of Social Services and numbered 18 NYCRR
§360.5(e)(1)(i), the regulation challenged by plaintiffs in this lawsuit.
(Exhibit A attached hereto is the relevant portions of the State plan proposal.
(Exhibit B attached hereto is Commissioner Callison's approval).

(5) Effective April 10, 1973, but retroactive to October 30, 1972,
Social Services Law §366.2(a)(8) was amended to increase the income exemption

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MYERS AFFIDAVIT

from \$2,200 to \$2,500 for one person households and from \$3,100 to \$3,400 for two person households. (L. 1973, c. 830, §1). The regulation was changed to comply with the statutory amendment. There have been no subsequent changes in the schedule.

(6) The income schedule of Social Services Law §366.2(a)(8) must comply with 45 C.F.R. 248.3(c)(1) for the State to receive Federal funding for its Medical Assistance program. The Department of Social Services does not have to comply with 45 C.F.R. 248.21(a)(3)(i)(b) and (c) and has not had to do so since January 1, 1974. 45 C.F.R. 248.21(a)(3)(i)(b) and (c) and apply only to Guam, Puerto Rico, and the Virgin Islands. (Exhibit C is 39 Fed. Reg. 9518, which announced the above-mentioned amendment to 45 CFR 248.21. Exhibit D is 45 CFR 248.3(c)(1)).

(7) On December 31, 1974, Elmer W. Smith, Regional Commissioner of Region II, Department of Health, Education, and Welfare, reapproved New York's State plan containing SSL §366.2(a)(8) and 18 NYCRR §360.5(e)(1)(i) under the new federal regulation, 45 CFR 248.3(c)(1). (Exhibit E attached hereto is the relevant portions of the State plan proposal. Exhibit F attached hereto is Commissioner Smith's approval. The State plan proposal mistakenly refers to 45 CFR 248.21. However, that proposal was submitted and approved in 1974, after 45 CFR 248.3 had replaced 45 CFR 248.21).

(8) The methodology used to compute the income schedule of SSL §366.2(a)(8) and 18 NYCRR §360.5(1)(i) do not conflict with 45 CFR 248.3(c)(1). Providing a uniform income exemption level by family size statewide is an acceptable methodology under the federal regulation.

The federal regulation provides two sets of requirements for income levels, one for families of three or more, the other for individuals and for families of two. For families of three or more, the State plan must:

- (1) Provide levels of income ... in total dollar amounts, as a basis for establishing financial eligibility for medical assistance. Under this requirement:
 - (i) Such income levels must be comparable as among individuals and families of varying sizes;
 - (ii) ... the income levels for maintenance must be, as a minimum, at the higher of the levels of the payment standards generally used as a measure of financial eligibility in the money payment programs, that is:

MYERS AFFIDAVIT

- (A) In the case of families of three or more, at the level of the payment standard of the State plan approved under title IV-A generally applied;

Under the New York Aid to Dependent Children program, enacted pursuant to title IV-A of the Social Security Act, ADC grants are computed as the sum of the basic grant plus a shelter allowance. The basic grant is uniform statewide, varying only by family size (SSL §131-a.2,3). The shelter allowance, however, differs from district to district. Each district provides rent as paid up to its own county maximum (18 NYCRR 352.3(a)) based upon housing market conditions in that district. Each ADC household's shelter allowance is determined on a case by case basis. For the purpose of having a "level of the payment standard of the State plan approved under title IV-A generally applied," the statewide ADC rents as actually paid were averaged for each household size and added to the basic grant for that household size. This provided a uniform amount statewide for each household size. SSL §366(2)(a)(8) satisfies all of the requirements under the federal regulations. The statute provides:

- (1) "levels of income ... in total dollar amounts, as a basis for establishing financial eligibility" (45 CFR 248.3(c)(1)),
- (2) "income levels" which are "comparable as among individuals and families of varying sizes" (45 CFR 248.3(c)(1)(i), and
- (3) an income level "at the level of the payment standard of the (ADC plan) generally applied" (45 CFR 248.3(c)(1)(ii)(A).

The averaging (mean) of ADC rents was used to develop the payment standard generally applied.

(9) The Department of Health, Education, and Welfare implicitly approved this methodology by approving the State plan. (See part 4 of this affidavit, supra). Additionally, that methodology was implicitly approved under the new federal regulation (45 CFR 248.3(c)(1)) when the State plan was re-approved. (See part 7 of this affidavit, supra).

(10). For individuals or for families of two, 45 CFR 248.3(c)(1) requires that the State plan must:

- (1) Provide levels of income ... in total dollar amounts, as a basis for establishing financial eligibility for medical assistance. Under this requirement:
 - (i) Such income levels must be comparable as among individuals and families of varying sizes;
 - (ii) ... the income levels for maintenance must be, as a minimum, at the higher of the levels of the payment standards generally used as a measure of financial eligibility in the money payment programs, that is:

...

EXHIBIT AFFIDAVIT

- (B) In the case of individuals, or families (including families with children) of two persons, at the higher of:
- (1) The payment standard of the State plan approved under title IV-A generally applied, or
 - (2) The highest level of payment which is generally available to individuals in any of the three groups (aged, blind and disabled) who are (or would be, except for income) eligible for benefits under title XIX...

Although the ADC payment standard is the only payment standard to be used for families of three or more, for smaller households, the State must use whichever program, ADC or Supplemental Security Income under title XIX, provides a higher payment standard. In New York State, Supplemental Security Income (SSI) provides a higher level of payment than the ADC "payment standard ... generally applied" both for one and two person households. Therefore, the federal regulation requires the SSI "highest level of payment generally applied" rather than the ADC "payment standard" as the measure of the Medical Assistance income standards for one and two person households in New York.

SSI payments are uniform statewide (42 USC §1382(b), SSL §209.2). To determine whether the income levels of SSL 366.2(a)(8) meet federal requirements for one and two person households, that standard need only meet or exceed the applicable "generally available" SSI levels. There is no need to compare it with possible ADC grants county by county since the ADC payment standard is not the higher of the program payment standards in New York State.

(11) Increases in public assistance levels that were not accompanied by increases in SSL §366.2(a)(8)'s income levels resulted in the income exemption for two person households not being high enough to meet federal requirements.

At the request of the State defendant, legislation was introduced in the New York State Legislature to raise the SSL §366.2(a)(8) income exemption level for two person households to 100% of the SSI payment level for two person households. The bill also proposes increases for other household sizes to take effect October 1, 1975 to meet anticipated future increases in ADC payment levels. SSL §366.2(a)(8) is not out of compliance with the federal regulation on these other family sizes. (Exhibit G attached hereto is the legislative proposal).

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MYERS AFFIDAVIT

However, this in no way calls into question New York's methodology (uniform statewide levels by family size). The Department of Health, Education and Welfare has never criticized this method of setting income levels.

(12) SSL §366.2(a)(8) currently provides reasonable standards comparable for all groups and, therefore, does not violate 42 U.S.C. 1396a(a)(17).

(13) Plaintiff's individual budgetary method of computing Medical Assistance income levels will cause considerable administrative difficulties. Obviously, any system that requires individual computations in every case rather than the application of a uniform schedule will require more man-hours to administer. Delays in the processing of applications would necessarily result.

In some social services districts, it would be impossible to use plaintiff's method for all applicants. Plaintiff proposes that an ADC budget be computed for each applicant. This would include rent as paid up to the county maximum. However, in many social services districts (including New York City) shelter grants above the maximum are allowed when the county determines that factual circumstances warrant an exception. If a person whose rent is above the county's maximum applies for Medical Assistance in a county which has an exception policy, the person processing the application will not know what the applicant's public assistance grant would be if the applicant were eligible for public assistance. The applicant may or may not be a person who would be granted an exception if he were a public assistance applicant. The procedure for computing public assistance grants is not as mechanical as plaintiff alleges.

According to paragraph 17 of Rene H. Reixach's Affidavit in support of a class action determination, out of a total of 62 counties, there are 32 counties in which some, but not all, household sizes can be subject to lower Medical Assistance standards than public assistance allowances. In other words, in 32 counties some, but not all, Medical Assistance-only recipients are class members. If plaintiff is successful in this lawsuit, two separate formulae would then be in effect for computing income levels: plaintiff's method for class members and the present method for nonmembers. This dual system probably will be difficult or impossible to administer. The administrative difficulties of that situation might require the use of plaintiff's

MYERS AFFIDAVIT

method of computation statewide to the detriment of nonmembers of plaintiff's class.

If nonmembers of the class have their Medical Assistance income levels computed by plaintiff's method rather than by the schedule in SSL § 366.2(a)(8), they will be allowed to keep less income for their nonmedical needs than at present. The class members are persons whose high rents cause their Medical Assistance income exemption level to be below what their public assistance grant would be if they had no income or resources. The nonmembers are persons whose low rents cause their Medical Assistance income exemption level to be above what their public assistance grant would be if they had no income or resources. Under plaintiff's system, these nonmembers would be allowed to keep only what their public assistance grant would be, not the higher amount provided by SSL §366.2(a)(8).

For instance, a family of three receiving Medical Assistance-only under the present system may keep \$333 of their income for their nonmedical needs. Under plaintiff's system, they would be able to keep only what their public assistance grant would be if they had no income or resources. This would be \$200 plus a shelter allowance (SSL §131-a.3). The shelter allowance is rent as paid up to a district maximum (18 NYCRR §352.3(c)). Every three person household on Medical Assistance-only whose public assistance shelter allowance would be less than \$133 would be able to keep less income using plaintiff's methodology than they can keep now using SSL §366.2(a)(8).

Beverlee Myers
BEVERLEE MYERS

Sworn to before me this
16th day of July, 1975.

Thomas O. Myers
NOTARY PUBLIC

THOMAS O. MYERS
Notary Public in the State of New York
Qualified in Oneida County
My Commission Expires Mar. 20, 1976

5- 75-69

STATE MEDICAL ASSISTANCE PLAN PROPOSAL, 1969 (PART)-NYSSL S 366 AND
RELATED PROVISIONS, EXHIBIT A TO MYERS AFFIDAVIT

- (2) All adults who are not otherwise eligible for medical assistance but who meet the requirements of the catastrophic illness provision as established by Section 366 of the Social Services Law

3. The following are all of the conditions of eligibility that must be met by individuals in all groups specified in Item 2, above:

- a. State residence required (no duration requirement). Medical assistance will be provided for persons in need who are temporarily in the State but who have not entered the State for the purpose of receiving such care and treatment.
- b. No age requirement.
- c. No citizenship requirement.
- d. Voluntary assignment or transfer of property has not been made for the purpose of qualifying for such assistance.

D-4200

B. Financial Eligibility

1. The following levels of income and resources for maintenance, in total dollar amounts, will be used as a basis for establishing financial eligibility for medical assistance, and are in accordance with D-4200 A, Item 1 a,b,c, and d:

a. Section 366 of the Social Services Law

".....2. (a) The following income and resources shall be exempt and shall neither be taken into consideration nor required to be applied toward the payment or part payment of the cost of medical care and service available under this Title:

- (1) a homestead which is essential and appropriate to the needs of the household;
- (2) essential personal property;
- (3) liquid resources in the amount of five hundred dollars for each person, but not in excess of two thousand dollars per family, as a burial reserve;
- (4) savings in amounts equal to at least one-half of the appropriate income exemptions allowed;

EXHIBIT A

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S- 75-69

- (5) income taxes;
- (6) health insurance premiums;
- (7) payments for support of dependents required to be made pursuant to court order; and
- (8) income in an amount set forth in the following schedule:

Annual net income - Number of family members in a household and family members for whom they are legally responsible or have assumed responsibility.

One	Two	Three	Four	Five	Six	Seven
\$2200	\$3100	\$4000	\$5000	\$5700	\$6400	\$7200

Such income exemptions shall be increased by six hundred dollars for each member of a family household in excess of seven..."

b. MA - determination of need.
Board Rule Section 85.3

"For the purpose of ascertaining need for medical assistance, in addition to the income and resources which are exempted in subdivision 2 of Section 366 of the Social Services Law, the following shall be exempt and shall neither be taken into consideration nor required to be applied toward the payment or part payment of the cost of medical assistance:

- (a) Contributions not in excess of \$1080 annually made to a family household by a person other than a member of such family household who resides therein; and
- (b) in the case of a person in chronic care \$15 per month for his personal expenses.

For the purpose of this section and subparagraph (8) of the paragraph (a) of subdivision 2 of Section 366 of the Social Services Law, when a person is in chronic care he shall not be deemed to be a member of any household except he shall be considered a member of his former family household for the purpose of determining the amount of the savings exemption for such family household."

2. There will be a flexible measurement of available income which will be applied in the following order of priority:

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MEDICAL ASSISTANCE PLAN PROPOSAL 1969

S- 75-

- a. First, for maintenance, so that any income in an amount at or below the established level will be protected for maintenance;
- b. Next, income in excess of that needed for maintenance will be applied to costs incurred for medical insurance premiums and for necessary medical or remedial care recognized under State law and not encompassed within the State Plan for medical assistance;
- c. All of the remaining excess income will be applied to costs of medical assistance included in the State plan in accordance with the following policies set forth in Regulation 360.5 and Board Rule 85.4:

(1) Determination of net available income and utilization of any excess

Department Regulation Section 360.5

- "(a) In determining the net available income of an individual or a family household, the following verified items shall be deducted from gross income:
 - (1) income taxes;
 - (2) health insurance premiums; and
 - (3) payments for support of dependents required to be made pursuant to court order.
- (b) The available net income shall be compared with the income exemptions for such individuals or family to determine the excess, if any, which may be utilized to meet all or part of the cost of medical care and services of such individuals or family.
- (c) For an applicant or recipient who, if needy, would be eligible for AABD, ADC or HR, the amount of income that is required to be or may be disregarded or set aside for his future needs in the category for which he would be eligible, shall not be considered as being available when applying the criteria for establishing his financial eligibility for medical assistance.
- (d) The excess income shall be utilized in accordance with Board Rule Section 85.4.

- (e) In making a determination of net income and amounts of excess income which may be utilized to meet all or part of the medical care and services of an individual who, or a family household which, receives a fixed annual salary, which is paid in a lump sum or over a period of time which is less than the annual period, such fixed annual salary shall be divided by twelve in order to determine net available monthly income for the annual period covered by such salary."

(2) Income and resources to be utilized
Board Rule Section 85.4

"(a) Applicants or recipients not in receipt of chronic care.

- (1) If an applicant or recipient is not receiving chronic care in a medical institution, all resources in excess of those exempt from consideration in accordance with paragraph (a) subdivision 2 of Section 366 of the Social Service Law and Section 85.3 of these rules shall be utilized to meet the cost of medical assistance for such applicant or recipient and other members of his family household.
- (2) The income of such applicant or recipient shall be utilized in the following manner:
 - (i) for inpatient hospital care, only the excess income for a period of six months shall be considered as available for payment;
 - (ii) for prosthetic appliances, including dentures only the income for a period of six months shall be considered as available for payment.
 - (iii) for other medical care and services outside a medical institution, only the excess income for the month or months in which care or

MEDICAL ASSISTANCE PLAN PROPOSAL 1969

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services are given shall be considered as available for payment.

(b) Applicants or recipients in receipt of chronic care

(1) If an applicant or recipient is receiving chronic care in a medical institution all resources in excess of those exempt from consideration in accordance with paragraph (a) of subdivision 2 of Section 366 of the Social Services Law and Section 85.3 of these rules shall be utilized to meet the cost of medical assistance for each applicant or recipient and the other members of his former family household.

(2) The income of such applicant or recipient shall be utilized in the following order:

(1) To meet the maintenance needs of the dependent members of his former family household, less any amount of income in cash or in kind possessed by such dependent members in accordance with the following schedules:

ANNUAL NET INCOME - MINIMUM RESERVE FOR MAINTENANCE OF FAMILY HOUSEHOLD OF PERSONS DEPENDENT FOR SUPPORT UPON APPLICANT OR RECIPIENT IN CHRONIC CARE

NUMBER OF FAMILY MEMBERS IN HOUSEHOLD DEPENDENT ON INCOME

ONE	TWO	THREE	FOUR	FIVE	SIX	SEVEN
\$2200	\$3100	\$4000	\$5000	\$5700	\$6400	\$7200

Such minimum reserve shall be increased by \$600 for each member of family household in excess of seven who is dependent upon the income of the applicant or recipient in chronic care.

(ii) the balance, if any, to meet the cost of his medical assistance."

3(a). All income and resources except those disregarded and set aside for future needs (See Department Regulation 360.5 (c) above) will be considered in establishing eligibility and payment toward the medical assistance costs.

(b). Payments for Medical Service and Care by a Third Party (Department Regulation 360.21)

(1) The local agency will take reasonable measures to ascertain any legal liability of third parties for the medical care and services included under the plan, the need of which arises out of injury, disease, or disability of applicants for or recipients of medical assistance.

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- (2) The local agency, in determining whether medical assistance is payable, will treat any third party liability as a current resource when such liability is found to exist and payment by the third party has been made or will be made within a reasonable time.
 - (3) The local agency will not withhold payment in behalf of an eligible individual because of the liability or the amount thereof cannot be currently established or is not currently available to pay the individuals medical expense.
 - (4) The local agency will seek reimbursement from a third party for assistance provided when the party's liability is established after assistance is granted and in any other case in which the liability of a third party existed, but was not treated as a current resource.
4. Only such income and resources as are actually available will be considered; income and resources will be reasonably evaluated; and only such income and resources will be considered as will be "in hand" within a period of 6 months ahead, including the month in which services were rendered for inpatient and prosthetic appliance or for the month or months in which services were rendered for which payment will be made for all other medical care or service under the plan.
5. The financial responsibility of any individual for any applicant or recipient of medical assistance will be limited to the responsibility of spouse for spouse, and parents of children under age 21.

Legally responsible relatives living apart from dependent relatives. Board Rule 85.5

"The ability of a spouse living apart from dependent relatives to contribute toward the cost of care of his or her spouse and of a parent living apart from dependent relatives to contribute toward the cost of care of his minor dependent child shall be ascertained as follows:

- (a) The following income and resources shall be exempt and shall constitute a reserve for the legally responsible relatives and members of his family household:

MEDICAL ASSISTANCE PLAN PROPOSAL 1969

- (1) a homestead which is essential and appropriate to the needs of the household;
- (2) essential personal property;
- (3) liquid resources in the amount of \$500 for each member of the family household but not in excess of \$2000 per family as a burial reserve;
- (4) savings in amounts equal to at least one-half of the appropriate income reserve; and
- (5) income in an amount set forth in the following schedule

ANNUAL NET INCOME - MINIMUM RESERVED FOR MAINTAINING OF FAMILY HOUSEHOLD OF
LEGALLY RESPONSIBLE RELATIVES LIVING APART FROM APPLICANT OR RECIPIENT
NUMBER OF FAMILY MEMBERS IN HOUSEHOLD DEPENDENT ON INCOME

ONE	TWO	THREE	FOUR	FIVE	SIX	SEVEN
\$2200	\$3100	\$4000	\$5000	\$5700	\$6400	\$7200

Such minimum reserve shall be increased by \$600 for each member of a family household in excess of seven, who is dependent upon the income of such members.

- (b) The amount in excess of the minimum income reserve for maintenance of the family household of the legally responsible relative living apart from the applicant or recipient shall be deemed to be the amount of contribution the spouse or parent is able to make prospectively toward the cost of medical assistance of the applicant or recipient.
- (c) Only the amount actually received shall be applied toward meeting the needs of the applicant or recipient. Such actual contributions shall be applied first toward the maintenance needs of the applicant or recipient, including a monthly amount for the personal expenses of a person in chronic care equal to the difference between his income, if any, and \$15, and the balance of such contributions, if any, toward the cost of medical assistance, as follows:
 - (1) the amount of resources in excess of those reserved shall be paid as a refund;
 - (2) in the event there is any balance remaining on a hospital claim, after the payment of the resources in excess of those reserved, the excess income for

MEDICAL ASSISTANCE PLAN PROPOSAL 1969

a period of six months shall be paid as a refund;

- (3) in the event medical care and services, other than inpatient hospital care are being furnished the excess income for the month or months in which care or services are given shall be paid as a refund.

D-4220B NOTE: The following items are applicable to the categorically needy:

1. The financial eligibility conditions of the pertinent State plan will apply.
2. Income will be applied first to maintenance costs.
3. Only income and resources which are actually available will be considered and income and resources will be reasonably evaluated.
4. The financial responsibility of any individual for any applicant or recipient of medical assistance will be limited to the responsibility of spouse for spouse and of parents for children under age 21.

D-4700 C. Blindness

1. The following is the State's definition of blindness in terms of ophthalmic measurement:

A person is defined as blind who is totally blind or has impaired vision of not more than 20/200 visual acuity in the better eye and for whom a diagnosis and medical findings show that vision cannot be improved to better than 20/200; or who has loss of vision due wholly or in part to impairment of field vision or to other factors which affect the usefulness of vision to a like degree.

2. In any instance in which a determination is to be made whether an individual is blind according to the State's definition, there will be an examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select.
3. Each eye examination report form will be reviewed by a State supervising ophthalmologist who is responsible for the agency's decision that the applicant does or does not meet the State's definition of blindness.

LETTER FROM JAMES C. CALLISON, REGIONAL COMMISSIONER OF NEW TO
GEORGE K. WYMAN, COMMISSIONER OF THE NEW YORK STATE DEPARTMENT
OF SOCIAL SERVICES, DATED APRIL 1, 1970, WITH ATTACHMENT, APPROVING
STATE MEDICAL ASSISTANCE PLAN, EXHIBIT B TO MYERS AFFIDAVIT


SOCIAL AND REHABILITATION
SERVICE

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
REGION II
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10007

Handwritten notes:
J. Callison
J. Wyman
H. B. L. L.
K. L. L. L.

April 1, 1970

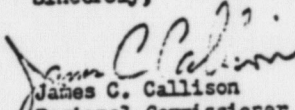
✓
/ Mr. George K. Wyman
Commissioner
State Department of Social Services
P.O. Box 1740
Albany, New York

Dear Mr. Wyman:

Your Submittal 75-69 amending New York State's Title
XIX Plan for Medical Assistance has been reviewed and
approved for incorporation into the State's approved
plan.

We understand that when the cost-sharing provision is
implemented by the State the procedure used will be as
outlined in Transmittal 69 PWD-73.

Sincerely,


James C. Callison
Regional Commissioner

Enclosure

EXHIBIT B

-101-

STATE MEDICAL ASSISTANCE PLAN APPROVAL

SUBMITTAL AND REPORT OF ACTION ON PUBLIC ASSISTANCE PLAN MATERIALS

1. To: Department of Health, Education, and Welfare

2. Date December 9, 1969

Regional Office 26 Federal Plaza, New York, New York
(Address)

3. Submittal No. S-75-59

Attention: Associate Regional Commissioner, Assistance Payments Administration

4. From: New York State Department of Social Services
(State public assistance agency)

Enclosed are six copies of the following materials submitted for approval as part of the State's plans for public assistance:

a. Signature Glenn Walsh

b. Title Acting Commissioner

Identification of material and program affected	Outline reference	Effective date	Material superseded	Disposition	
7	8	9	10	11	12
New York State Plan of Title XIX	Sec. III				
Pages 7 - 12d	Item D4200	Various	Pages 7 - 12e	AL	
Pages 17c, 17d	D4800	<u>1/1/70</u>		AL	
	Section IV	Various	Page 17c	AL	
	D5400	<u>1/1/70</u>			

13. To: New York State Department of Social Services

14. Date 3/31/70

15. The above materials were received in the regional office on DEC 15 1969

16. Items A and AL accepted for incorporation. 3/31/70
(Date)

Associate Regional Commissioner: ALB
Regional Commissioner

1/ The symbols inserted indicate that the item:

(A) Has been accepted for incorporation into the State's approved plan.

(AL) Has been accepted for incorporation into the State's approved plan, comments in letters.

(O) Has been filed as other than plan material.

(NL) Is under consideration and notice of action will be sent later.

State NEW YORK

Citation

45 CFR
248.40
P.R.10-6(C-1)

2.3 Residence

Medical assistance is furnished to eligible individuals who are residents of the State but are absent therefrom, to the extent and under the circumstances specified in 45 CFR 248.40. The State agency facilitates the meeting of medical needs within the State for residents of other States.

45 CFR
248.70
P.R. 10-11

2.4 Blindness

(a) The definition of blindness in terms of ophthalmic measurement which is used in this plan is contained in ATTACHMENT 2.2-A.

(b) All other requirements of 45 CFR 248.70 are met.

45 CFR
248.80
P.R. 10-11

2.5 Disability

(a) The definition of permanently and totally disabled which is used in this plan is contained in ATTACHMENT 2.2-A.

(b) All other requirements of 45 CFR 248.80 are met.

45 CFR
248.21
P.R. 10-11

2.6 Financial Eligibility

(a) Categorically needy. The financial eligibility conditions of the pertinent assistance plans are applied.

(b) Medically needy.

☒ The levels of income and resources, expressed in total dollar amounts, which are used as a basis for establishing eligibility under the plan are as described in ATTACHMENT 2.6-A. These income levels and resources meet the requirements of 45 CFR 248.21.

☐ Not applicable. The medically needy are not included in the plan.

EXHIBIT E

STATE MEDICAL ASSISTANCE PLAN PROPOSAL 1974

- 6 -

State NEW YORK

Citation

45 CFR

248.21

P.R. 10-11

- (c) The financial responsibility of certain relatives for costs of medical care and services provided for an applicant or recipient of medical assistance will be taken into account.

☒ Yes. The extent of responsibility is described in ATTACHMENT 2.6-A.

☐ Not applicable. No responsibility is imposed on relatives for costs of care and services provided under the plan.

- (d) All other requirements of 45 CFR 248.21 are met.

-104-

STATE MEDICAL ASSISTANCE PLAN PROPOSAL 1974
STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

Attachment 2.6-A

State NEW YORK

FINANCIAL ELIGIBILITY CONDITIONS AND REQUIREMENTS

I. GENERAL - APPLICABLE TO THE CATEGORICALLY NEEDY AND MEDICALLY NEEDY

A. Financial responsibility is imposed on the following relatives with respect to care and services provided under the plan:

1. Spouse for spouse

☒ Yes.

☐ Yes, with the following exceptions:

☐ No responsibility is imposed

2. Parents for children under age 21

☒ Yes.

☐ Yes, with the following exceptions:

☐ No responsibility is imposed

3. Parents for children of any age who are blind

☐ Yes.

☐ Yes, with the following exceptions:

☒ No responsibility is imposed

STATE MEDICAL ASSISTANCE PLAN PROPOSAL 1974

4. Parents for children of any age who are disabled

☐ Yes.☐ Yes, with the following exceptions:☒ No responsibility is imposed

- B. ☒ The following income scale is used to determine a relative's capacity to contribute toward the cost of medical care and services provided under the plan to a spouse and/or child(ren) not residing with such relative:

Number of persons in relative's household (including the relative)	Income level at which relative considered capable of contributing to costs of medical care of spouse or child(ren)
1	\$ 2500
2	\$ 3400
3	\$ 4000
4	\$ 5000
5	\$ 5700
6	\$ 6400
7	\$ 7200
8	\$ 7900
9	\$ 8400
10	\$ 9000
Each additional family member	\$ 600

- ☐ Not applicable. No relatives are held financially responsible for costs of medical and remedial care and services

I. (continued)

C. The following provisions relate to the financial condition of individuals in facilities for long term care:

1. For the categorically needy, budgeted amounts are allowed for personal needs, upkeep of home and/or care of dependents:

☒ Yes. The following budgeted amounts are allowed:

- | | |
|--|-------------------------------------|
| <input checked="" type="checkbox"/> For patient's personal needs | \$ <u>17 mo.</u> |
| <input checked="" type="checkbox"/> For maintenance of spouse at home | \$ <u>1010.00 annually</u> |
| <input checked="" type="checkbox"/> For maintenance of each additional dependent at home | \$ <u>600.00 annually</u> |
| <input checked="" type="checkbox"/> For maintenance of home to which patient expects to return | as paid, up
\$ <u>to 60 days</u> |

☐ Not applicable. No such amounts are budgeted.

2. For the medically needy, eligibility and excess income are determined on the basis of amounts shown in paragraph C.1., above

☐ Not applicable. The medically needy are not covered.☐ Yes☐ Yes, with following variations:☒ No. The following provisions are applicable.

Income level for medically needy determined
on same scale as scale at B and II Ac.

II. MEDICALLY NEEDY ONLY - OTHER FINANCIAL CONDITIONS AND REQUIREMENTS

A. Treatment of income

1. Income levels protected for maintenance are

☒ Net income, computed as follows:

Family members

one	two	three	four	five	six	seven
2,500	3,400	4,000	5,000	5,700	6,400	7,200

☒ Gross income, determined as follows:

All income earned or unearned, (except those protected by legislative intent) with these deductions:

- (1) Income taxes
- (2) Health Insurance Premiums
- (3) Payments for support of dependents pursuant to court order

II. A. (continuel)

2. Income levels by family size

- a. The State agency uses urban and rural differentials in establishing the amounts of income protected for maintenance

☐ Yes. These amounts are indicated in columns (2) and (4) of the table in paragraph c., below.

☒ No such differentials are used. The income levels for all medically needy individuals are as stated in column (2)

- b. The income levels protected for maintenance exceed the level of the most liberal money payment standard used in any of the State's categorical money payment programs, or 133 1/3% of the highest amount ordinarily paid to an AFD family, whichever is less.

☐ Yes. The State agency has methods for excluding from its claim for Federal financial participation payments of amounts equivalent to those in columns (3) and (5).

☒ No. Income levels are not in excess of those permitted by 45 CFR 248.21.

- c. The following table specifies the annual income levels protected for maintenance which are used under this plan:

Family Size	Income level protected for maintenance	Amount by which Column (2) exceeds limits specified in 45 CFR 248.21	Income level for persons living in rural areas	Amount by which Column (4) exceeds limits specified in 45 CFR 248.21
(1)	(2)	(3)	(4)	(5)
1	\$ 2500	\$	\$	\$
2	\$ 3400	\$	\$	\$
3	\$ 4000	\$	\$	\$
4	\$ 5000	\$	\$	\$
5	\$ 5700	\$	\$	\$
6	\$ 6400	\$	\$	\$
7	\$ 7200	\$	\$	\$
8	\$ 7900	\$	\$	\$
9	\$ 8400	\$	\$	\$
10	\$ 9000	\$	\$	\$
For each Additional Person add:	\$ 600		\$	

NOTICE OF APPROVAL OF STATE MEDICAL ASSISTANCE PLAN COMPLIANCE WITH 45
C.F.R. § 248.21, EXHIBIT F TO MYERS AFFIDAVIT APR 1 1975

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL AND REHABILITATION SERVICE
WASHINGTON, D.C. 20201

Submit 6 Copies

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL
SOCIAL AND REHABILITATION SERVICE STATE PLAN PROGRAMS

SIGNAL COMMUNICATION
SOCIAL AND REHABILITATION SERVICE
DEPARTMENT OF HEALTH, EDUCATION, & WELFARE

TRANSMITTAL NUMBER

74-2

PROGRAM IDENTIFICATION (Same identification as this page of preprinted plan)


Medical Assistance

TYPE OF ACTION SUBMITTED FOR APPROVAL (Check one and enter effective date)

NEW STATE PLAN

AMENDMENT

CONVERSION TO PREPRINT

EFFECTIVE DATE  Prior to January 1, 1974

REGULATION CITATION

CFR 204.2

PLAN SECTION OR ATTACHMENT

NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT

PRINT PLAN

OF AMENDMENT

NARRATIVE PLAN

Conversion Medical Assistance Plan to preprint format

GOVERNOR'S OFFICE (Check one)

☒ GOVERNOR'S OFFICE REPORTED NO COMMENT

☐ COMMENTS OF GOVERNOR'S OFFICE ENCLOSED

☒ REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL TO GOVERNOR'S OFFICE

DATE OF STATE AGENCY OFFICIAL

Commissioner

20, 1974

(Include full address of State Agency)

Department of Social Services
Eastern Avenue
New York 12203

REPORT OF SRS APPROVAL

DATE RECEIVED IN REGIONAL OFFICE

MAR 27 1974

REGION

II

Plan approved - one copy enclosed

SIGNATURE OF REGIONAL OFFICIAL

TITLE

REGIONAL
COMMISSIONER

DATE

DEC 31 1974

REMARKS

EXHIBIT F

-110-

AFFIDAVIT OF RENE H. REIXACH, SWORN TO AUGUST 1, 1975, IN OPPOSITION
TO DEFENDANT LAVINE'S MOTION FOR SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARION AITCHISON, et al.,

Plaintiffs,

-against-

ABE LAVINE, et al.,

Defendants.

:
:
:
: 75 Civ. 1224
:
: MEF
:
: AFFIDAVIT
:
:
:

STATE OF NEW YORK)
COUNTY OF MONROE) ss:

RENE H. REIXACH, being duly sworn, deposes and says:

1. I am a member of the Bar of this Court and one of the attorneys for the plaintiffs herein; I make this affidavit in opposition to the motion by the defendant Abe Lavine for summary judgment.

2. The defendant Lavine's motion for summary judgment is based in large part on an affidavit of Beverlee Myers, a Deputy Commissioner of the New York State Department of Social Services. In that affidavit she asserts that the medical assistance income allowances are based upon some sort of averaging which allegedly comports with the policies of the U.S. Department of Health, Education and Welfare.

3. Such assertions hardly rise to the level of undisputed facts required for summary judgment under Rule 56 of the Federal Rules of Civil Procedure, which the defendant Lavine has

REIXACH AFFIDAVIT OF AUGUST 1

apparently recognized by failing to include any such purported facts in a Rule 9(g) statement. That alone would be sufficient to defeat his summary judgment motion.

4. Second, if the medical assistance income allowances were in fact based upon the basic cash public assistance level plus the average rent level at the various family sizes, it defies credulity that the medical assistance income allowances for families of three or more are in 1975 the same as they were six years ago in 1969 (after a reduction in 1969). During that same period the basic cash public assistance levels set out in the New York Social Services Law have been increased by some twenty to fifty percent. Moreover, it is incontrovertible that rent levels have risen precipitously over the last six years. Indeed, in a letter written on March 5, 1975, by the Defendant Lavine and produced in another action in this Court, Nero v. Lavine, 75 Civ. 1024, he pointed out that even 1972 shelter costs were no longer valid. As he put it, "It is unrealistic to believe that 1972 shelter cost data is applicable today." A copy of that letter is annexed hereto.

5. Third, it is respectfully submitted that pursuant to Rule 56 (f) of the Federal Rules of Civil Procedure it would be appropriate to refuse the defendant Lavine's application for summary judgment at this time. Both sets of parties erroneously proceeded under an old regulation, no longer applicable in New York, until about a month ago, after the plaintiffs had already moved for summary judgment. The defendant's averaging theory

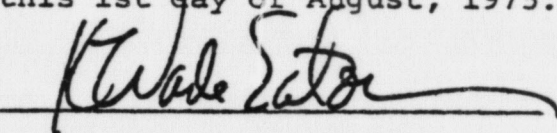
REIXACH AFFIDAVIT OF AUGUST 1

was first asserted in the papers in support of his summary judgment motion, served by mail fifteen (15) days before the return date. Inasmuch as the plaintiffs have moved for summary judgment discovery has not seemed appropriate; in light of the substantial questions raised concerning the validity of the purported averaging by the defendant (see paragraph 4, supra), the fact that this litigation is only four plus months old and that since the plaintiffs moved for summary judgment two months ago discovery by them has been inappropriate, it is presently impossible for the plaintiffs to demonstrate more fully the flaws in the defendant's averaging theory.

WHEREFORE your deponent prays that the motion by the defendant for summary judgment be denied.


Rene H. Reixach

Sworn to before me
this 1st day of August, 1975.


K. WADE EATON
Notary Public in the State of New York
MONROE COUNTY, N. Y.
Commission Expires March 30, 1976

LETTER FROM ABE LAVINE, COMMISSIONER OF THE DEPARTMENT OF SOCIAL SERVICES, TO PETER C. GOLDMARK, DIRECTOR OF THE DIVISION OF THE BUDGET, DATED MARCH 5, 1975, EXHIBIT TO REIZACH AFFIDAVIT OF AUGUST 1

DEPARTMENT OF SOCIAL SERVICES

1450 WESTERN AVENUE

ALBANY, NEW YORK

ABE LAVINE
Commissioner

March 5, 1975

Dear Mr. Goldmark:

A decision is urgently needed on the question of shelter allowances for public assistance recipients.

Unless action is taken by March 10, 1975, regulations now on file with the Secretary of State, with significant fiscal implications, will be effective on April 1, 1975.

The background is as follows:

In order to resolve an outstanding compliance issue with the U.S. Department of Health, Education and Welfare relating to New York State's Shelter Policy, in 1974 the Department established maximum shelter allowances for each local district.

The allowances, which varied by family size, were based on data from a 1972 survey of shelter costs. Allowances for rent as paid up to the maximum were permitted, with no exceptions.

The initial effective date was April 1, 1974, but due to the reaction of community groups, there were two postponements -- one to January 1, 1975 and the next to April 1, 1975. Thus the policy will automatically go into effect on April 1 if Department regulation (18 NYCRR 352.3) is not changed.

I recommend the following:

1. Instead of permitting the pending maximum allowances to become effective, I recommend that an updated schedule reflecting 1974 costs levels be substituted. It is unrealistic to believe that 1972 shelter cost data is applicable today.

2. For current recipients paying rent in excess of the agency maximum, I also recommend a "grandfathering" provision to insure that no reductions in the assistance grants occur because of this policy. HEW has, in the past, indicated its objection to a grandfathering provision, but I feel that this should not be a deterrent to moving ahead with such an amendment.

EXHIBIT **B**

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LAVINE TO GOLDMARK, MARCH 5, 1975

A schedule containing district maximums at the 1974 level and a statement of the fiscal implications of such a policy are attached.

Establishment of maximum rent allowances would be the first step towards implementing a total flat grant. Over a period of time, the number of grandfathered cases would be reduced and cases initially receiving allowances below the maximums would gradually rise to the maximum. The maximum would then, in effect, become a flat grant.

It is of course possible to move to a total flat grant immediately and I suggest this solution as a secondary approach. I am attaching a Department proposal for a consolidated public assistance standard which discusses this approach.

The issue obviously is not a new one. In addition to the initial promulgation of regulations and the two postponements last year, it was the subject of questioning at both the Department's formal and legislative budget hearings, and was discussed in the "issues" paper which I submitted on December 23 to the Transition Team.

The March 10 deadline must be observed because by that date we must notify local social services districts and legislative leaders and file amending regulations with the Secretary of State if we are to forestall the present regulations from becoming effective on April 1.

Sincerely,

/s/ Abe Lavine

Abe Lavine

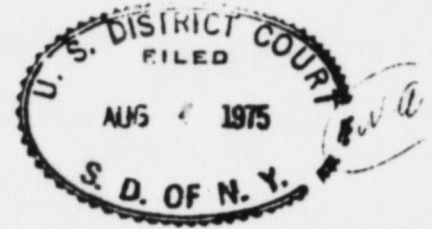
Enclosures

Hon. Peter C. Goldmark, Director
Division of the Budget
State Capitol
Albany, New York

cc: Mr. David W. Burke

PLAINTIFFS' ANSWER TO DEFENDANT LAVINE'S
STATEMENT PURSUANT TO RULE 9(g)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



MARION AITCHISON, et al.,

Plaintiffs,

-vs-

ABE LAVINE, et al.,

Defendants.

75 Civ. 1224
MEF

ANSWER TO DEFENDANT
LAVINE'S RULE 9(g)
STATEMENT

Insofar as the defendant Abe Lavine by his answer to the Rule 9(g) statement of plaintiffs makes a Rule 9(g) statement in support of the summary judgment motion of the defendant Lavine, the plaintiffs respectfully allege:

1. Deny the allegation in paragraph 2 thereof that the plaintiffs are permitted to retain \$28.50 of their total monthly income, for a total of \$361.50 monthly income, but allege that said \$28.50 is allowed to Mr. Aitchison, not a party herein, to meet his own needs.

2. Denies that the amount of the medical assistance amounts in dollar amounts that the defendant Lavine administers are not yet in evidence, the same having been duly pleaded in paragraph 24 of the complaint and only denied insofar as that paragraph alleged that the plaintiffs' constitutional or other federally protected rights have been abridged or violated and otherwise the said paragraph 24 is deemed admitted.

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PLAINTIFFS' ANSWER TO DEFENDANT LAVINE'S STATEMENT PURSUANT
TO RULE 9(g)

3. Denies that the plaintiffs receive a total monthly income of \$346.68 and alleges that in addition to a mortgage income of \$92.59 monthly they received monthly Social Security benefits of \$220.20 through June, 1975; that Mr. Aitchison, who is not a plaintiff, received Social Security benefits of \$256.30 per month through June, 1975; that effective July 1, 1975 the Social Security benefits were increased statutorily by 8%; and that Mr. Aitchison, who is not a plaintiff, also receives a pension currently in the amount of \$328.71 monthly.

4. Denies the allegations in paragraph 4(b) insofar as they assert that the October 3, 1973 Social Security award is income in this action rather than, at most, allowable savings or another reserve, or is relevant to this action at all.

Dated: August 1, 1975

RENE H. REIKACH, ESQ.
GREATER UP-STATE LAW PROJECT
MONROE COUNTY LEGAL ASSISTANCE
CORPORATION
30 West Main Street
Rochester, New York 14614
Tel: 716-454-6500

DOUGLAS J. GOOD, ESQ.
ALTON L. ABRAHONWITZ, ESQ.
LEGAL AID SOCIETY OF
ROCKLAND COUNTY, INC.
2 Congers Road
P.O. Box 314
New City, New York 10956
Tel: 914-634-3627

SUPPLEMENTAL AFFIDAVIT OF RENE H. REIXACH
sworn to August 27, 1975, in support of
motion for class action determination

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARION AITCHISON, et al.,

Plaintiffs,

-vs-

ABE LAVINE, et al.,

Defendants.

Civil Action No.
75 Civ. 1224
MEF

SUPPLEMENTAL CLASS
ACTION AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF MONROE)ss:

RENE H. REIXACH, being duly sworn, deposes and says:

1. I am a member of the Bar of this Court and one of the attorneys for the plaintiffs herein; I make this affidavit to supplement the affidavits heretofore submitted in support of the plaintiffs' motion for a class action determination.

2. Since the filing of the plaintiffs' class action motion the income allowance tables of the New York Social Services Law, section 366.2(a)(8), have been increased by the Legislature. By Chapter 480 of the Laws of 1975 those income allowances were increased to the levels shown in the bill which is Exhibit G to the affidavit of Beverlee Myers in opposition to this motion. By Chapter 481 the levels for one and two person families were further increased. While the increases for one and two person families were effective retroactive to July 1, 1975, the increases for families of three or more will not be effective until October 1, 1975. Set forth below are the amended

income levels including the October 1, 1975 increase:

Family Size	1	2	3	4	5	6	7	8
Annual Income	\$2700	3800	4200	5000	5800	6500	7400	8100
Monthly Income	225	317	350	417	483	542	617	675

3. Since those levels have been increased, and the class consists of all persons whose monthly public assistance level of need would be higher than such levels, the size of the class has shrunk. Based upon the methodology set forth in paragraph 14 of my prior affidavit in support of the class action motion, dated May 19, 1975, I have recomputed the 58 charts which were annexed to the affidavit of James Reynolds, dated May 19, 1975, in support of the class action motion. As in the prior version of these charts, where a number in column 3 or 4 is circled the medical assistance standard exceeds the public assistance maximum, so persons so situated would be outside the class. Where a number in column 3 or 4 is not circled the public assistance allowance can be higher than the medical assistance allowance, and people for whom the public assistance standard is higher than under medical assistance are within the class. Copies of the 58 revised sheets are annexed.

4. The effect of this change is as follows. Instead of there being 16 counties plus all of New York City where persons can be in the class at all family sizes and rental arrangements there are now 5 such counties, all in suburban or exurban New York

City, namely Nassau, Rockland, Suffolk, Sullivan and Westchester. As Exhibit "B" to my prior affidavit showed, those counties have substantial numbers of medical assistance recipients; in January, 1975, there were 39,056 persons receiving medical assistance but not public assistance in those 5 counties.

5. The number of counties in which persons at some but not all family sizes or rent arrangements could be in the class drops from 32 to 30 under the new schedule. The number of counties where the problem herein cannot exist because in all cases the medical assistance level exceeds the public assistance level increases from 7 to 23.

6. It should be noted, however, that the rent schedules upon which these calculations are based are in a state of flux. In another action pending in this Court, Nero v. Lavine, 75 Civ. 1024 JMC, challenging those rent levels, the defendant state commissioner has indicated that effective October 1, 1975 new rent schedules are expected to be put into effect. Annexed hereto is a copy of the affidavit of Ralph McMurtry, Assistant Attorney General, dated August 7, 1975, and exhibits thereto, to that effect.

7. In certain cases those proposed changes would affect the category in which a county would fall in this action.

Reixach affidavit of August 27

Under the proposed schedules three counties, Chemung, Franklin and Oswego would shift from the group where persons could never be in the class to the group where some could while others could not. Likewise the group of counties where persons could be in the class at all family sizes and rent arrangements would be increased by three counties, Herkimer, Orange and Putnam, plus New York City. Thus there would be 8 counties plus New York City where class membership could exist at all family sizes and rent arrangements, 30 counties where class membership could exist only in some cases, and 20 counties where it could not exist.

8. While these changes represent an improvement over the situation when this case was filed they do not solve the problem. The named plaintiffs, for example, will come October 1, 1975, be allowed \$350 per month, \$17 more than now, but still \$90 less than the public assistance level for them. Likewise the size of the gap in some counties will have actually increased. For families of four, for example, the medical assistance income allowance has stayed the same, but shelter allowances will generally increase. That fact, of course, is also a further demonstration of the inherent contradictions of the assertion by the defendant state commissioner that the medical assistance allowances are based on some sort of average rents. If rent levels are increased for families of four, as proposed, then the four person medical assistance level would increase too under the commissioner's contention. The fact is, however, that it has not.

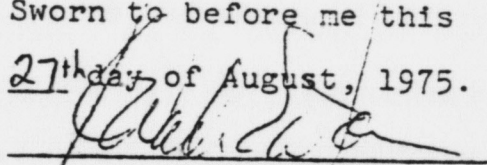
Reixach affidavit of August 27.

9. The papers from Nero v. Lavine are also instructive insofar as the commissioner herein asserts that because of exceptions to the rent levels in New York City and elsewhere it would be impossible to use the plaintiffs' proposed method of calculation since in such areas the public assistance level cannot be determined. As the submission to HEW (Exhibit C to the McMurry affidavit) shows, such exceptions will be phased out over the next two regular recertifications, taking no more than one year.

WHEREFORE, deponent respectfully prays that the plaintiffs' class action motion be granted.


RENE H. REIXACH

Sworn to before me this
27th day of August, 1975.


K. WADE EATON
Notary Public in the State of New York
MONROE COUNTY, N. Y.
Commission Expires March 30, 1976

[charts deleted. Corrected charts
appear at pp. 150-200 of this Appendix.]

Affidavit of Ralph L. McMurry, sworn to
August 7, 1975 with Exhibits A through C
from Nero v. Lavine, 75 Civ. 1024, S.D.N.Y.,
Exhibit to Reixach affidavit of August 27.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DIANE NERO; LYNN RANZER; PAULINE HINES;
URSELINE FINDLAY; and HARRIET TAYLOR,
On Behalf of Themselves and All Other
Similarly Situated,

Plaintiffs,

75 Civ. 1024
JMC
AFFIDAVIT

- against -

ABE LAVINE, Individually and in His Capacity
as Commissioner of the New York State De-
partment of Social Services,

Defendant.

STATE OF NEW YORK)
COUNTY OF ALBANY)

RALPH McMURRY, being duly sworn, deposes and says:

'1. I am an Assistant Attorney General in the office of Louis Lefkowitz,
Attorney General of the State of New York. I submit this Affidavit in
opposition to plaintiffs' application for preliminary and permanent
injunctive relief.

2. A copy of a submittal of the new shelter plan to the New York State
Budget Director Peter Goldmark by New York State Social Services Commissioner
Berger is annexed as Exhibit "A". A copy of Mr. Goldmark's reply is
annexed as Exhibit "B". A copy of the Department's submittal to the Department
of Health, Education and Welfare is annexed as Exhibit "C".

Ralph L. McMurry
Ralph L. McMurry

Sworn to before me this
7th day of August, 1975

Glenn R. Lilebrou
Notary Public

Albany County #4608937
Commission expires 3/30/77

723-

Commissioner

Affidavit of Ralph L. McMurtry, sworn to
August 7, 1975 with Exhibits A through C
from Nero v. Lavine, 75 Civ. 1024, S.D.N.Y.,
Exhibit to Reixach affidavit of August 27.
August 5, 1975

Dear Peter:

Enclosed for your consideration is the Department's proposed schedule of rent allowances for New York State public assistance recipients. Rent as paid will be provided up to the maximum of the schedule. The schedule does not include an amount for heating fuel. For housing in which the rent includes heat, the maximum rent allowance is computed by adding the maximum rent of the new rent schedule to the heating fuel allowance of 18 NYCRR 352.5(a) (enclosed). For housing in which the rent does not include heat, a separate allowance for heating is granted pursuant to 18 NYCRR 352.5(a).

It is anticipated that the new rent schedule will be filed by September 1, 1975, effective October 1, 1975.

I hope that this letter has been useful in explaining the Department's new shelter policy.

Sincerely,

Stephen Berger
Commissioner

ER/PJR
Enclosure

Mr. Peter C. Goldmark, Jr.
Director
Division of the Budget
The State Capitol
Albany, New York 12224

EXHIBIT "A"

-124-

Affidavit of Ralph L. McMurry, sworn to
August 7, 1975 with Exhibits A through C
from Nero v. Lavine, 75 Civ. 1024, S.D.N.Y.,
Exhibit to Relbach affidavit of August 27.
STATE OF NEW YORK

EXECUTIVE DEPARTMENT
DIVISION OF THE BUDGET
ALBANY 12224

PETER C. GOLDMARK, JR.
DIRECTOR OF THE BUDGET

August 5, 1975

The Honorable Stephen Berger
Commissioner
Department of Social Services
1450 Western Avenue
Albany, New York 12243

Dear Commissioner Berger:

This is to inform you that we have reviewed the schedules of maximum welfare recipient shelter allowances proposed in your communication of August 5, 1975 and have no objection to such schedules. It is our understanding that these schedules will be filed with the Secretary of State for inclusion in departmental regulations so that the schedules can be implemented as quickly as possible.

Sincerely,

P. C. Goldmark

EXHIBIT "B"

-125-

Affidavit of Ralph L. McMurry, sworn to
August 7, 1975 with Exhibits A through C
from Nero v. Lavine, 75 Civ. 1024, S.D.N.Y.,
Exhibit to Reixach affidavit of August 27.

August 4, 1975

Mr. Elmer Smith
Regional Commissioner
Region II
Social and Rehabilitation Service
Department of Health, Education
and Welfare
26 Federal Plaza
New York, New York 10007

Re: Submittal No. 75-39
Maximum Monthly Shelter Allowance

Dear Mr. Smith:

As requested at the meeting on July 31, 1975 between representatives of this Department and your staff we are formally submitting the Department's shelter policy which will be effective October 1, 1975. The submittal includes

- Schedule of local agency maximum monthly shelter allowances with and without heat.
- A draft administrative letter to local agencies announcing the policy and providing instructions for implementation.

As indicated at the meeting, the basis for our policy is the Department's 1972 Shelter Study, conducted under the close supervision of your Department, and in its final form approved by you. During July, 1975 we conducted a shelter allowance review in order to establish an update mechanism whereby the allowances developed from the 1972 study data could be increased to provide recipients an adequate allowance in today's market. The methodology was provided to your staff at the July 31st meeting.

The maximum allowance schedule will be effective October 1, 1975 and local agencies will be instructed by an Administrative Letter to apply the revised shelter policy - rent as paid up to the agency maximum - for all new and reopened cases. For the undercare caseload, rent will be continued to be paid up to the agency maximum. For those existing cases above the newly established maximum, the recipient will be informed at the next regularly scheduled recertification and/or first personal contact of the new policy and advised that at the next recertification,

EXHIBIT "C"

-126-

Affidavit of Ralph L. McMurtry, sworn to
August 7, 1975 with Exhibits A through C
from Nero v. Lavine, 75 Civ. 1024, S.D.N.Y.,
Exhibit to Reixach affidavit of August 27.

- 2 -

he/she will be granted the appropriate agency maximum by family size in that district. We expect the phase-in of our revised shelter policy will not exceed one year.

The Department is attempting through this policy to resolve the HUD compliance issues and to satisfy the relief sought by the plaintiffs in Nero et al v. Lavine. After resolving these two immediate issues and after sufficient time has elapsed to permit an evaluation of the experiences of the clients and of the local districts under this policy, we anticipate proceeding with a review of a wide range of issues in the area of shelter for PA recipients, including the feasibility of consolidation of the current rent allowance schedule.

Based upon your approval of our 1972 Shelter Study, I trust that our modification is acceptable. We look forward to your prompt approval and your continued cooperation in the further development of a shelter policy for New York State.

Sincerely,

0.8/5

Blanche Bernstein

Enclosures

SI:EAS:HB
:sd

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ADMINISTRATIVE LETTER

DRAFT

8/4/75

Effective: October 1, 1975

TO: Commissioners of Social Services

SUBJECT: Shelter Allowances

Distributions: All Public Assistance Staff
Accounting Staff

The purpose of this Administrative Letter is to transmit a revised statewide shelter policy which mandates use of maximum monthly shelter allowance schedules by district effective October 1, 1975.

The following Administrative Letters relating to shelter allowances are hereby rescinded: 74 AHS-24, 74 AHS-179, and 75 AHS-25.

Shelter Policy

An allowance for rent in private rental housing and recipient-owned property shall be made in the amount actually paid by the recipient but not in excess of the appropriate maximum for the social services district as indicated on the attached schedule. The maximum allowances represent firm administrative ceilings for rent. Exceptions shall not be allowed.

Implementation of the Shelter Policy

I. Application

Effective October 1, 1975, in determining ^{initial} eligibility for public assistance and the amount of the monthly grant and allowances the rent allowance shall be based on the policy stated above.

II. Recertification

In all regular recertifications initiated on or after October 1, 1975, rent allowances shall be reviewed against the appropriate maximum rental allowance of the social services district. Rent as paid up to the appropriate agency maximum shall be provided.

Affidavit of Ralph L. McMurtry, sworn to August 7, 1975 with Exhibits A through C from Nero v. Lavine, 75 Civ. 1024, S.D.N.Y., Exhibit to Reixach affidavit of August 27.

- 2 -

If the current rent is above the agency maximum, the recipient shall be informed of the agency maximum at the next regularly scheduled recertification and advised that at the next recertification rent shall be provided in accordance with the appropriate agency maximum for the family size. Until that second recertification the case shall be continued at the current level. Referral shall be made to the Services Division to provide whatever housing relocation services may be needed and requested by the recipient.

III. Change in Case Circumstances or Personal Contact Requiring Review of Rent Allowance

When a rent allowance is being reviewed because of a change in case circumstances or at the request of the recipient, a revised allowance shall be made in accordance with the policy stated herein. Such circumstances shall include, but are not limited to

- a request for approval to move
- a change in the number of persons in the public assistance household
- a request for an increase in a rent allowance

Page replacements to Bulletin 134 will be forthcoming.

Deputy Commissioner

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Affidavit of Ralph L. McMurtry, sworn to
 August 7, 1975 with Exhibits A through C
 from Nero v. Lavine, 75 Civ. 1024, S.D.N.Y.,
 Exhibit to Reixach affidavit of August 27,

LOCAL AGENCY MAXIMUM MONTHLY SHELTER ALLOWANCES WITHOUT HEAT

By Family Size

	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8+</u>
Albany	121	151	153	153	153	153	153	153
Allegany	85	106	106	106	106	106	106	106
Broome	104	130	136	136	136	136	150	150
Cattaraugus	67	84	93	93	93	93	93	93
Cayuga	75	94	94	100	106	114	114	120
Chemung	72	90	90	96	96	101	107	157
Chemung	79	99	104	107	115	129	137	137
Chenango	66	83	93	93	103	108	108	121
Clinton	57	71	73	88	92	92	93	93
Columbia	104	130	130	132	132	132	132	132
Cortland	96	120	120	140	151	155	155	161
Delaware	76	95	97	97	97	97	97	102
Dutchess	109	136	143	145	155	155	155	155
Erie	108	135	135	135	137	137	137	137
Essex	72	90	90	90	90	90	90	91
Franklin	66	83	83	91	91	91	91	91
Fulton	80	100	100	100	100	100	100	100
Genesee	93	116	116	116	116	116	116	171
Greene	85	106	108	110	110	110	110	113
Hamilton	56	70	85	85	89	97	103	113
Herkimer	118	147	147	147	147	147	147	147
Jefferson	56	70	72	79	89	97	103	113
Lewis	68	85	85	90	93	95	110	111
Livingston	74	93	93	93	93	93	93	93
Madison	102	127	127	127	127	127	127	127
Monroe	115	144	152	156	157	165	165	176
Montgomery	74	92	92	92	94	94	94	127
Nassau	141	176	225	251	271	285	333	355
New York City	128	160	169	185	189	209	261	273
Niagara	88	110	114	115	124	126	165	165
Oneida	74	93	100	101	107	118	130	130
Onondaga	102	127	127	127	140	159	159	160
Ontario	102	123	132	132	132	143	143	143
Orange	119	149	166	167	167	176	176	176
Orleans	78	93	101	101	101	101	115	115
Oswego	74	93	105	105	115	120	125	125
Otsego	93	116	116	116	116	116	116	125
Putnam	113	141	165	165	165	208	208	209
Rensselaer	82	102	102	102	102	102	102	121
Rockland	154	193	223	242	285	317	356	388
St. Lawrence	81	101	102	109	109	110	110	110
Saratoga	100	125	134	141	148	148	148	148
Schenectady	89	111	113	114	125	146	146	155
Schoharie	93	116	116	116	116	116	116	125
Schuyler	102	127	127	127	127	127	127	127
Seneca	81	101	101	101	106	106	107	157
Steuben	76	95	115	115	115	116	116	132
Suffolk	179	224	244	263	275	282	283	313
Sullivan	115	144	161	169	183	204	204	204
Tioga	66	82	95	95	95	95	99	99
Tompkins	104	130	137	141	146	163	163	184
Ulster	105	131	135	140	142	158	158	159
Warren	78	97	93	100	100	100	110	111
Washington	80	100	100	100	105	106	106	114
Wayne	93	116	116	116	116	116	116	116
Westchester	143	185	226	232	287	287	348	400
Wyoming	78	97	93	98	106	106	110	111
Yates	60	75	80	80	80	80	80	80

Affidavit of Ralph L. McMurtry, sworn to
August 7, 1975 with Exhibits A through C
from Nero v. Lavine, 75 Civ. 1024, S.D.N.Y.,
Exhibit to Reixach affidavit of August 27.

LOCAL AGENCY MAINTENANCE MONTHLY SHELTER ALLOWANCES WITH HEAT
By Family Size

	1	2	3	4	5	6	7	8+
Albany	138	171	179	187	189	191	193	195
Allegany	110	141	151	162	165	167	171	175
Broome	129	155	161	192	195	197	215	219
Cattaraugus	92	119	138	149	152	154	158	162
Cayuga	97	125	134	150	159	170	174	183
Chemung	85	103	124	117	118	125	132	183
Chenango	101	130	144	157	168	185	197	200
Clinton	91	118	143	154	157	169	173	190
Columbia	82	106	123	144	151	153	158	162
Cortland	126	151	170	182	185	188	192	195
Delaware	121	155	165	195	210	216	220	230
Dutchess	101	130	142	153	156	158	162	171
Erie	131	167	183	195	208	211	215	218
Essex	121	153	159	164	169	170	172	173
Franklin	102	133	142	159	163	166	167	177
Fulton	96	126	135	150	164	167	168	177
Genesee	105	135	145	156	159	161	165	169
Greene	115	147	156	166	169	172	176	176
Hamilton	107	137	148	160	163	166	170	176
Herkimer	86	113	37	154	162	173	180	199
Jefferson	143	122	192	203	206	208	212	216
Lewis	81	105	123	139	148	158	168	182
Livingston	93	120	131	145	152	156	175	180
Madison	96	124	133	143	146	149	153	156
Montgomery	127	162	172	183	186	188	192	196
Monroe	131	155	161	192	195	204	208	221
Nassau	99	127	137	148	153	155	159	196
New York City	160	203	238	293	316	332	383	408
Niagara	144	183	194	218	226	249	303	317
Oneida	101	126	135	141	153	155	197	199
Onondaga	99	128	145	157	166	179	195	199
Ontonario	124	158	167	177	193	215	219	223
Orange	124	159	172	182	185	199	203	206
Orleans	141	180	206	217	220	232	236	239
Oswego	100	129	141	151	154	157	175	178
Otsego	96	124	145	155	168	176	185	188
Putnam	118	151	161	172	175	177	181	194
Rensselaer	135	172	205	215	218	264	268	272
Rockland	99	122	128	136	138	140	142	163
St. Lawrence	173	220	251	284	337	364	406	441
Saratoga	106	136	147	165	168	171	175	179
Schenectady	125	160	179	197	207	209	213	217
Schoharie	106	131	139	148	161	184	186	197
Schuyler	118	151	161	172	175	177	181	194
Seneca	124	158	167	177	180	183	187	190
Steuben	103	132	141	151	159	162	167	170
Suffolk	101	130	150	171	174	177	181	201
Sullivan	198	251	277	305	320	329	333	366
Tioga	140	179	206	225	242	265	269	273
Tompkins	91	117	140	151	154	156	164	168
Ulster	126	161	177	191	199	219	223	247
Warren	127	162	175	190	195	214	218	222
Washington	103	132	143	156	159	161	175	180
Wayne	102	131	140	150	158	162	166	177
Westchester	115	147	156	166	169	172	176	179
Wyoming	167	212	259	274	332	334	398	453
Yates	103	132	143	154	165	167	175	180
	82	106	120	130	133	136	140	143

Stipulation of Facts and Order dated
September 9, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MARION AITCHISON, individually and on :
behalf of MICHAEL AITCHISON and JANICE :
AITCHISON, her children, and on behalf :
of all other persons similarly :
situated, :

Plaintiffs, :

-against- :

LEE LAVINE, individually and as :
Commissioner of the Department of :
Social Services of the State of New York :
and NOAH WEINBERG, individually and as :
Commissioner of the Department of Social :
Services of Rockland County, New York, :

Defendants. :
-----X

STIPULATION + ORDER

75 Civ. 1224

M.E.F.

IT IS HEREBY STIPULATED AND AGREED by and between
the attorneys for the respective parties as follows:

1. This stipulation is submitted in response to
the Memorandum for counsel, dated August 22, 1975 (hereinafter
"Memorandum").

2. Stephen Berger is substituted for defendant
LEE LAVINE effective on the date of this Stipulation. See
Memorandum, para. 5.

3. The facts set forth in subdivisions "a" through
"d" of this paragraph which were previously unclear or in
dispute are agreed to. See Memorandum, paras. 1 and 2.

a. Exhibit "C" submitted with plaintiffs'
Notice of Class Action Motion is not new has it ever been
the state-wide shelter allowance schedule. The alleged county

Stipulation of Facts and Order dated
September 9, 1975

differentials between medical assistance family income and public assistance family income set forth in the affidavit of James Reynolds, sworn to May 19, 1975, and accompanying 58 tables and in the Supplemental Class Action Affidavit of Rene H. Feixach, sworn to August 27, 1975, and accompanying 58 tables are incorrect except as to Albany, Cattaraugus, Chautauqua, Chenango, Clinton, Dutchess, Erie, Essex, Monroe, Niagara, Oneida, Orange, Rockland, Steuben, Suffolk, Tompkins, Ulster and Wayne Counties which have adopted Exhibit "C" as their local schedule.

b. At the time of the commencement of this action, the named plaintiffs constituted a family of three under NYSSL § 366(2)(a)(3). As of the date of this Stipulation, the named plaintiffs are budgeted as a family of two under NYSSL § 366(2)(a)(3) without prejudice to plaintiffs' claims of a larger family size in other and subsequent proceedings. The parties' positions with respect to the relevance of family size to the merits and the Class Action application were presented to the Court at oral argument on this date.

c. At the time of the commencement of this action, the monthly income of the Mitchison family (including Mr. Mitchison) was:

Stipulation of Facts and Order dated
September 9, 1975

1. \$256.30 (Social Security Disability for Mr. Aitchison)
2. \$220.20 (Social Security Disability for Mrs. Aitchison and dependents)
3. \$277.59 (Mr. Aitchison's pension)
4. \$92.59 (payment on mortgage).

On or about October 3, 1973, the Aitchisons' received \$2,570.20 (social security lump sum disability payment) which was turned over to Mrs. Aitchison's brother in satisfaction of a previously incurred debt.

d. At the time of this Stipulation, the monthly income of the Aitchison family (including Mr. Aitchison) was:

1. \$277.40 (Social Security Disability for Mr. Aitchison)
2. \$236.00 (Social Security Disability divided equally between Mrs. Aitchison and Janice Aitchison)
3. \$323.71 (Mr. Aitchison's pension)
4. \$92.59 (payment on mortgage)
5. \$40.00 (Michael Aitchison's payment to Mrs. Aitchison)
6. \$5.00 (V.A. dividend to Mr. Aitchison).

4. The federal and state regulations relevant to the disposition of this action are 15 C.F.R. § 248.3(c)(1)(ii) and 19 NYCRR §§ 360.5(e) and 360.7(a).*

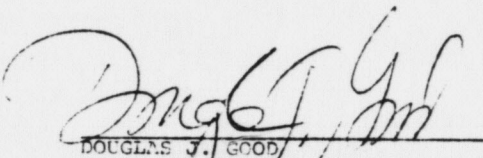
* Section 360.5(e) will be amended shortly to conform with increased annual minimum reserves ("spend down" limits) provided in NYSSL § 366(2)(a)(8), as amended.

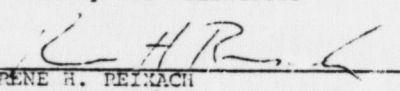
Stipulation of Facts and Order dated
September 9, 1975

Additional statutes and regulations may be referred to by
counsel in their briefs. In the event that NYSSL § 366(2) (a)
is found inconsistent with 45 C.F.R. § 248.3(c)(1)(ii),
defendants contend that § 248.3(c)(1)(ii) is inconsistent with
42 U.S.C. § 1396a(a)(17). See Memorandum, par. 3.

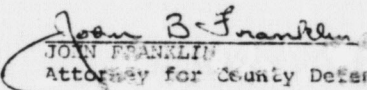
5. This stipulation may be modified or supplemented
as the parties may hereafter agree and the Court may permit.

Dated: New York, New York
September 9, 1975

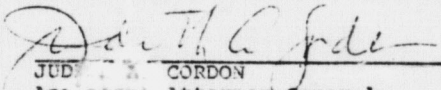

DOUGLAS J. GOOD
Legal Aid Society of Rockland
County, Inc.
Attorney for Plaintiffs


RENE H. REIMACH
Greater Up-State Law Project
Monroe County Legal Assistance
Corporate
Attorney for Plaintiffs

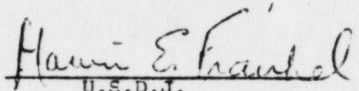
DIANA W. RIVET
County Attorney for Rockland
County
By


JOAN B. FRANKLIN
Attorney for County Defendants

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
By


JUDITH A. CORDON
Assistant Attorney General
Attorney for State Defendants

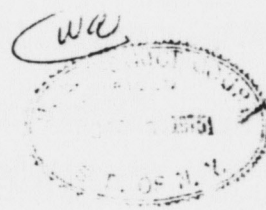
SO ORDERED: September 9, 1975


Haim E. Frankel
U.S.D.J.

-135-

Supplemental Stipulation of Facts dated
September 24, 1975 and Order

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
MARION AITCHISON, individually and
on behalf of MICHAEL AITCHISON and
JANICE AITCHISON, her children,
and on behalf of all other person
similarly situated,

Plaintiffs,

SUPPLEMENTAL
STIPULATION

-against-

75 Civ. 1224

M:ER

STEPHEN BERGER, individually and as
Commissioner of the Department of
Social Services of the State of New
York and NOAH WEINBERG, individually
and as Commissioner of the Department
of Social Services of Rockland County,
New York,

Defendants.
-----X

IT IS HEREBY STIPULATED AND AGREED by and between the
attorneys for the respective parties that the Stipulation
entered into on September 9, 1975 be and the same is hereby
amended and supplemented as follows:

1. Plaintiff Marion Aitchison lives with plaintiff
Michael Aitchison (age 20) and plaintiff Janice Aitchison (age 16)
in an apartment at 5 K Fletcher Road, Monsey, New York, County of
Rockland. The apartment consists of a living room, kitchen, two
bedrooms and bath. The rent as of the date of this Stipulation
is \$250.00 per month.

2. The most recent Budget Worksheet-Medical Assistance
form [New York State Department of Social Services Form, No. DSS-
517 (Rev. 8/73)] prepared for the Aitchison's by the Rockland
County Department of Social Services is annexed as Exhibit "A".

3a. As of the date this action was commenced, the
income of the Aitchinson's (including Mr. Aitchison) was allocated
as follows under 18 N.Y.C.R.R. § 360.5(e):

MICROFILM

0019945

Supplemental Stipulation of Facts dated
September 24, 1975 and Order

Mr. Aitchison's income totaled		\$ 333.89
Mr. Aitchison was allowed to retain a personal allowance for his maintenance needs in the nursing home of		<u>(28.50)</u>
After subtracting that personal allowance Mr. Aitchison has left for the support of his dependents and his medical expenses		505.39
Mrs. Aitchison and the two Children have income of	\$ 312.79	
As a family of three the income allowance for Mrs. Aitchison and the children is	<u>333.00</u>	
Mrs. Aitchison and the children have a deficit of	(20.21)	
Mr. Aitchison is allowed to make up the deficit	<u>20.21</u>	<u>(20.21)</u>
The deficit of Mrs. Aitchison and the children is reduced to zero and they are allowed \$333.00	0.00	
Mr. Aitchison has left for his medical expenses		\$ 485.18

3b. As of the date of this Stipulation, the income of
the Aitchison's (including Mr. Aitchison) is allocated as follows
under 18 N.Y.C.R. § 360.7(a):

Supplemental Stipulation of Facts dated
September 24, 1975 and Order

Mr. Aitchison's income totals		\$611.11
Mr. Aitchison is allowed to retain a personal allowance for his maintenance needs in the nursing home of		<u>(28.50)</u>
After subtracting that personal allowance Mr. Aitchison has left for the support of his dependents and his medical expenses. As shown below, it is all to be used for his medical care since his dependents have income in excess of the maintenance level		582.61
		<u>(582.61)</u>
		0.00
Mrs. Aitchison's income is	\$250.59	
Mrs. Aitchison's pro-rata share of the \$317.00 income allowance is one-half or		<u>(158.50)</u>
Mrs. Aitchison has left for the support of Janice and for Mr. Aitchison's medical expenses	92.09	
Janice's income is		118.00
Janice Aitchison's pro-rata share of the \$317.00 income allowance is also		<u>(158.50)</u>
Janice's deficit is		\$ (40.50)
Mrs. Aitchison is allowed to contribute \$40.50 to bring Janice's income up to her pro-rata one-half share of the \$317.00 allowance and her deficit up to zero	<u>(40.50)</u>	<u>40.50</u> 0.00
Mrs. Aitchison has left for Mr. Aitchison's Medical expenses	51.59	
Mrs. Aitchison is to use her excess income for her husband's medical expenses reducing her income for her own maintenance to her pro-rata one-half share of the \$317.00 allowance and leaving her with a deficit of zero	<u>(51.59)</u>	<u>0.00</u>

4. In New York, Medical Assistance is available to persons who receive public assistance ("PA") and to those who do not receive public assistance but who qualify under the medical assistance eligibility standards ("non-PA"). In appropriations budgeting of departmental monies for medical assistance, no distinction is made between PA medical assistance recipients and

Supplemental Stipulation of Facts dated
September 24, 1975 and Order

non-FD medical assistance recipients. The total medical assistance budget for the current fiscal year is \$3,065,972,000 (1/2 federal; 1/4 state; 1/4 local). If the plaintiffs are successful in this class action, the financial impact on the state medical assistance budget will be in excess of \$10,000.

5a. Effective July 1, 1975 through September 30, 1975, the exempt annual net income (by family size) of medical assistance recipients under NYSSL § 366(2)(a)(8) has been and continues to be:

One	Two	Three	Four	Five	Six	Seven
\$2,700	3,800	4,000	5,000	5,700	6,400	7,200

The income exemptions are increased by \$600 annually for each family member in excess of seven.

5b. Effective October 1, 1975, the exempt annual net income (by family size) of medical assistance recipients under NYSSL § 366(2)(a)(8) will be:

One	Two	Three	Four	Five	Six	Seven
\$2,700	3,800	4,200	5,000	5,800	6,500	7,400

The income exemptions shall increase by \$700 annually for each family member in excess of seven.

The amounts specified for family sizes of one and two are the same as the SSI benefits payments provided for those family sizes living alone rounded to the next highest \$100 on an annual basis.* Defendants contend that the SSI benefit payments were selected under 45 C.F.R. § 248.3(c)(1)(ii)(B) because they are higher than the averaged AFDC grants for one and two person families. Defendants further contend that the amounts specified for family sizes of three or more are the basic AFDC grants for families of those sizes plus the averaged and rounded shelter allowances paid to such families. In the event that the issue is

-4-

* Although some SSI recipient individuals and couples living alone receive more than the SSI benefit payment (i.e. those grandfathered into the SSI program pursuant to Pub. L. 93-66 Sec. 212), no such individuals or couples receive less except where they have other income.

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Supplemental Stipulation of Facts dated
September 24, 1975 and Order

plaintiffs contend that the amount specified do not represent an accurate average the relevant AFDC grants and allowances. The parties are prepared to proceed with discovery and trial of that issue should it become necessary.

6. The following portion of paragraph "3c" of Stipulation signed September 9, 1975 is withdrawn:

"On or about October 3, 1973, the Aitchisons' received \$2,579.20 (social security lump sum disability payment) which was turned over to Mrs. Aitchison's brother in satisfaction of a previously incurred debt."

The following paragraph is substituted in its place:

"On or about October 3, 1973, the Aitchisons' received \$2,579.20 (social security lump sum disability payment) which was turned over to Mrs. Aitchison's brother. Plaintiffs contend that the transfer was made in satisfaction of a previously incurred debt. Defendants contend that there is no evidence to support the transfer for that purpose. Notwithstanding the purpose of the transfer, plaintiffs contend that the lump payment is immaterial to the outcome of this case."

Dated: New York, New York
September 24, 1975

Douglas J. Good
DOUGLAS J. GOOD
Legal Aid Society of Rockland
County, Inc.,
Attorney for Plaintiffs

RENE M. REIXACH
RENE M. REIXACH
Greater Up-State law Project
Monroe County Legal Assistance
Corporation
80 West Main Street
Rochester, New York 14614

DIANA W. RIVET
County Attorney for Rockland
County
By

John B. Franklin
JOHN B. FRANKLIN
Assistant County Attorney
Attorney for County Defendants

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York

Judith A. Gordon
JUDITH A. GORDON
Assistant Attorney General
Attorney for State Respondents

SC ORDERED. 10-8-75

Martin S. Frankel
L.S.D.S.

Exhibit A to Supplemental Stipulation

Form DSS-517 (Rev. 8/73) (Formerly MA-11) Page

BUDGET WORKSHEET - MEDICAL ASSISTANCE

Department of Social Ser.

State of New York

If form is being completed for responsible relative, check here ☐ and enter name and address of such relative below.

Applicant's Name

Case Number

Name

ATTENTION TO USER - FAMILIAL TANIEL

31347

Address

No. in Family (not person in chronic care)

2

Period

Income Exemption

Savings Exemption

Pers. A Chronic

No. of Wage Earners

Annual

Monthly

1000

200

20

Person in Family rec. chronic care

☒ Yes ☐ No

Section A. INCOME AND DEDUCTIONS OF HOUSEHOLD (From Form DSS-518 - Formerly MA-11)

NAME (List only those reporting income on Form MA-11)	Gross Income		Annual Equiv. of Column 2	1. Include as gross income any room and board income in excess of \$1000/annum; \$90/mo. \$21/week.	Amounts Shown in Col. 2	Deductions From Wages		Column 5 - Less Total of Col. 6 and Col. 7	Wan Eq. Col. 8
	Amount	Per.				Health Insurance	Income Taxes		
1	2	3	4		5	6	7	8	
Long. R. Corp.	275.00	M	3000						27
Long. R. Corp.	275.00	M	3000						27
Long. R. Corp.	112.50	M	1250						11
Long. R. Corp.	112.50	M	1250						11
Long. R. Corp.	275.00	M	3000						27
Long. R. Corp.	275.00	M	3000						27
Long. R. Corp.	275.00	M	3000						27
Long. R. Corp.	275.00	M	3000						27
Long. R. Corp.	275.00	M	3000						27
Long. R. Corp.	275.00	M	3000						27
TOTAL OF COL. 4			11495.60					TOTAL OF COL. 9	(a) 9

Section B. AVAILABLE RESOURCES

VALUE OF LIFE INSURANCE			Allowable Deductions Not Deducted From Wages		
Person's Name (List Each Policy Separately)	Total Face Value	Total Cash Value	Health Insurance	Actual	Per. Monthly Equiv.
1	2	3	4		
W. L. Quitcher, Inc. - T. L.	6000				
" " " " " " " " " " " "	2000	1700			
W. L. Quitcher, Inc. - T. L.	6000				
TOTAL (Col. 3)					
Bank Accounts (Empire State Bank)					
Non-homestead Property					
Other Liquid Assets					
Total Resources (Line 1+2+3+4)					
Burial Reserve (No. in family x \$500) (Maximum \$2,000)	2000				
Allowable Savings Exemption	2500				
Total Exemption (Line 6 + Line 7)					
Available Resources (Line 5 less Line 8)					

Section C.

MONTHLY INCOME AVAILABLE FOR CONTRIBUTION TOWARDS COST OF MEDICAL CARE

1. Monthly Net Income (From Section A, Line (a) less Line (b))	9
2. Monthly Income Exemption	282.00
3. Monthly Income Disregarded	
4. Pers. Allowance Chronic Care	20.50
5. Total (Line 2+3+4)	3
6. Available Monthly Income (Line 1 less Line 5)	6

Section D. CATASTROPHIC ILLNESS - COMPUTATION OF ELIGIBILITY (Persons 21-64 Not Federally Related)

Net Income from Section C, Line 1 x 12 =	A \$	x 25%	\$
Subtract PA Standard (Annual) - B \$			
Excess over PA Standard - C \$			
LESSER AMOUNT			Amount to be P. by Applicant for Catastrophic Ill \$

COMPUTATION OF AMOUNT TO BE PAID FOR COST SHARING

Complete Boxes A, B and C of Section D. The amount in Box C is the amount the client is to pay before becoming eligible for A coverage.

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Exhibit A to Supplemental Stipulation

PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE

Section E: APPLICATION OF AVAILABLE INCOME AND/OR RESOURCES - Do not use for Catastrophic Illness

I. Hospital Care and Prosthetic Appliances

(a) Total Cost or Estimate _____

(b) Less, Available Resources _____

(c) Balance _____

Eligible Monthly Income _____
(Sum of 6 months to be applied)

Explain below the manner of applying available resources and/or income indicated in items above. Note that for chronic care, resources in excess of exemption would have been exhausted before family becomes eligible for Medical Assistance. (If resources available for partial month's cost, explain below.)

George, William + Jeanie Blue Grosbeaks

2. Chronic Care

(a) Monthly Cost of Care _____

(b) Available Monthly Income _____

(c) Balance (a minus b) _____

Cost of care to be met by:

(d) Monthly Income Actually Received by Patient (if over \$17.00) _____

(e) Less Pers. Allowance 17.00

(f) Balance (d minus e) _____

(g) Balance - Payment to Vendor by Patient Line (b) or (f) whichever is less _____

(h) To be paid by Social Services Department Line (a) less line (g) _____

(i) Refund to Social Services Dept. by Family - Line (b) minus line (g) _____

Section F. ELIGIBILITY

NOTE: Enter below the effective date of eligibility next to the appropriate coverage for both children and adults. If all adults not have the same coverage, enter effective date and name of each adult next to applicable coverage.

EXPLANATION	COVERAGE	Children		Adults
		Eff. Date	Eff. Date	Name
All available benefits.	(A)			Mr. Robert L. Kinsinger
Table benefits with cost sharing. must pay 20% of all Outpatient Services.	B			
limited to Inpatient care and services only.	C			
limited to Inpatient care and services only - max.	D			

Section C. SUMMARY OF WAGES FROM WAGE INFORMATION SUBMITTED

Name of Person				Name of Person			
PERIOD	Gross Income	Income Taxes Deducted	Health Ins. Deducted	PERIOD	Gross Income	Income Taxes Deducted	Health Ins. Deducted
TOTAL				TOTAL			
* AVERAGE				* AVERAGE			

* Determine prospective income on the basis of the average figures computed above and enter on face of form, SECTION A

SIGNATURE OF WORKER

DATE SIGNED _____

Supplemental Affidavit of Rene H. Reixach,
sworn to September 24, 1975 correcting and
updating comparison of medical assistance
exempt income levels and public assistance
grants including maximum shelter allowances

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARION AITCHISON, et al.,

Plaintiffs,

-vs-

ABE LAVINE, et al.,

Defendants.

75 Civ. 1224
MEF

SUPPLEMENTAL
AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF MONROE) ss:

RENE H. REIXACH, being duly sworn, deposes and says:

1. I am a member of the Bar of this Court and one of the attorneys for the plaintiffs herein. I make this affidavit to correct and update information pertaining to which of the 58 social services districts in New York (57 counties plus New York City) have public assistance allowances, including shelter, which are higher at any family size than the medical assistance income allowances challenged herein.

2. There have heretofore been submitted two analyses of this sort, one in the class action affidavits of James Reynolds and myself sworn to May 19, 1975, and my supplemental class action affidavit sworn to August 27, 1975. Pursuant to the stipulation of counsel dated September 9, 1975, it has now been agreed that those prior calculations were incorrect except as to eighteen (18) counties, namely Albany, Cattaraugus, Chautauqua, Chenango,

Supplemental Affidavit of Rene H. Reixach,
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exempt income levels and public assistance
grants including maximum shelter allowances

Clinton, Dutchess, Erie, Essex, Monroe, Niagara, Oneida, Orange,
Rockland, Steuben, Suffolk, Tompkins, Ulster and Wayne Counties
(Stipulation dated September 9, 1975, ¶3(a)). Accordingly, the
analyses heretofore made have been redone.

3. As was the case with the prior analyses, to which
the Court is referred for the methodology thereof, I have
analyzed the total public assistance allowances, by county, fam-
ily size and housing arrangements (heat included in rent or not)
and compared them with the challenged medical assistance allow-
ances. Since the motions now pending before the Court will not
be finally submitted until October 1, 1975, I have based these
analyses on the increased medical assistance allowances which will
be effective on October 1, 1975, pursuant to Chs. 480 and 481 of
the 1975 New York Session Laws as well as on the rent schedules
which the defendant State Commissioner Stephen Berger has promul-
gated to be effective October 1, 1975 (see N.Y. Times, Sept. 8,
1975). Copies of those rent schedules are annexed as exhibits
hereto, and are the same as those annexed to my supplemental class
action affidavit of August 27, 1975. The amended medical assis-
tance income allowances used for these calculations are as
follows:

Family size	1	2	3	4	5	6	7	8
Annual income	\$2700	3800	4200	5000	5800	6500	7400	8100
Monthly income	225	317	350	417	483	542	617	675

Supplemental Affidavit of Rene H. Reixach,
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4. Under the new rent schedule the discrepancies which once existed between rent maximums for dwellings with heat included in the rent and those with heat paid separately will be eliminated. Still, however, based on family size, there will exist three categories of counties, those in which the medical assistance allowances always exceed the maximum public assistance allowance, those where the medical assistance allowance exceeds the public assistance maximum at some family sizes, and those where the medical assistance allowance never exceeds the public assistance maximum.

5. In the first category, where the medical assistance allowance always exceeds the public assistance allowance, there are 20 counties, namely Cattaraugus, Cayuga, Chautauqua, Clinton, Delaware, Essex, Fulton, Hamilton, Jefferson, Lewis, Livingston, Montgomery, Niagara, Orleans, Rensselaer, Tioga, Warren, Washington, Wyoming, and Yates. Persons residing in those counties will be outside the class since they cannot be allowed a medical assistance income allowance which is below the applicable public assistance allowance.

6. In the second category, where the medical assistance allowance can exceed the public assistance allowance at some family sizes, there are 29 counties, namely Albany, Allegany, Broome, Chemung, Chenango, Columbia, Cortland, Dutchess, Erie, Franklin, Genesee, Greene, Madison, Monroe, Oneida, Onondaga, Ontario, Oswego, Otsego, St. Lawrence, Saratoga, Schenectady,

Supplemental Affidavit of Rene H. Reixach,
sworn to September 24, 1975 correcting and
updating comparison of medical assistance
exempt income levels and public assistance
grants including maximum shelter allowances

Schoharie, Schuyler, Seneca, Steuben, Tompkins, Ulster and Wayne.

In eight (8) of those counties, namely Broome, Cortland, Dutchess, Monroe, Onondaga, Saratoga, Tompkins and Ulster, the problem raised herein can exist at all family sizes except one and two person families; in Albany County the problem can exist at all family sizes except seven or eight. In those nine (9) counties the problem thus affects most family sizes and persons in such families could be in the class. In another ten (10) counties, on the other hand, the problem can exist at only one or two family sizes and for most people the medical assistance allowances exceed the public assistance maxima so they could not be in the class. Those ten counties whose residents largely must be outside the class are Allegany, Chemung, Chenango, Franklin, Greene, Oneida, Oswego, St. Lawrence, Schenectady, and Seneca.

7. In another eight (8) counties, plus all of New York City, the problem can exist, and hence class membership can exist, at all family sizes. In addition to New York City the problem can occur at all family sizes in Herkimer, Nassau, Orange, Putnam, Rockland, Suffolk, Sullivan and Westchester Counties (essentially suburban New York City).

8. Also annexed hereto is the most recently published tabulation of numbers of non-public assistance recipients of medical assistance, contained in "Social Statistic" published by the New York State Department of Social Services, volume 37, no. 5 for May, 1975, issued September 8, 1975. It shows that there were in May, 1975, 197,937 such persons in New York State. In New

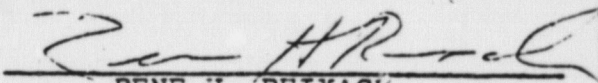
Supplemental Affidavit of Rene H. Reixach,
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exempt income levels and public assistance
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York City and the eight counties where class membership can occur at all levels of family size there were 106,407 recipients, or 53.76% of the statewide total; in the twenty (20) counties where the problem can never arise, however, there were only 22,172 recipients, a mere 11.20% of the statewide total.

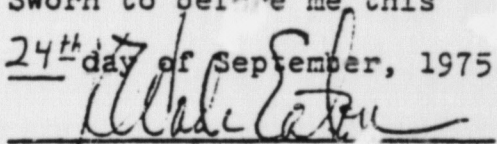
9. The size of the gap in the counties where the problem herein can occur at all family sizes is great. The maximum discrepancy exists for a family of eight in Westchester County, where the gap is \$246.00 per month; in Rockland County, where the plaintiffs reside, the eight person gap is \$234.00 per month. The gap is also large at other family sizes. For example, in Nassau, Rockland, Suffolk and Westchester Counties it exceeds \$100.00 per month for all family sizes of three or more. The existence of such sizeable differentials between the public assistance and medical assistance schedules in such populous areas demonstrates that this problem indeed affects a sizeable class.

10. The existence of this three tiered system also demonstrates that the present schedules violate equal protection, for medical assistance recipients are allowed to live above or below the public assistance level solely on the basis of their county of residence, family size, and shelter costs.

WHEREFORE, deponent respectfully prays that the plaintiffs' motions be granted and the defendant's be denied.


RENE H. REIXACH

Sworn to before me this
24th day of September, 1975.



K. WADE EATON
Notary Public in the State of New York
MONROE COUNTY, N. Y.
Commission Expires March 30, 1976

Maximum monthly shelter allowances (proposed
to take effect October 1, 1975), Exhibit to
Reixach affidavit of September 24

LOCAL AGENCY MAXIMUM MONTHLY SHELTER ALLOWANCES WITHOUT HEAT
By Family Size

	1	2	3	4	5	6	7	8+
Albany	121	151	153	153	153	153	153	153
Allegany	85	106	106	106	106	106	106	106
Broome	104	130	136	136	136	136	150	150
Cattaraugus	67	84	93	93	93	93	93	93
Cayuga	75	94	94	100	106	114	114	120
Chemung	72	90	90	96	96	101	107	157
Chemung	79	99	104	107	115	129	137	137
Chenango	66	85	93	98	103	108	108	121
Clinton	57	71	73	83	92	92	93	93
Columbia	104	130	130	132	132	132	132	132
Cortland	95	120	120	140	151	155	155	161
Delaware	75	95	97	97	97	97	97	102
Dutchess	109	136	143	145	155	155	155	155
Erie	103	135	135	135	137	137	137	137
Essex	72	90	90	90	90	90	90	91
Franklin	65	83	83	91	91	91	91	91
Fulton	80	100	100	100	100	100	100	100
Genesee	93	115	116	116	116	116	116	171
Greene	85	106	108	110	110	110	110	113
Hamilton	56	70	85	85	89	97	103	113
Herkimer	118	147	147	147	147	147	147	147
Jefferson	56	70	78	79	89	97	103	113
Lewis	68	85	86	90	93	95	110	111
Livingston	74	93	93	93	93	93	93	93
Madison	102	127	127	127	127	127	127	127
Monroe	115	144	152	156	157	165	165	176
Montgomery	74	92	92	92	94	94	94	127
Nassau	141	175	225	251	271	285	333	355
New York City	128	150	169	185	189	209	261	273
Niagara	88	110	114	115	124	126	165	165
Oneida	74	93	100	101	107	118	130	130
Onondaga	102	127	127	127	140	159	159	160
Ontario	102	123	132	132	132	143	143	143
Orange	119	147	166	167	167	176	176	176
Orleans	74	93	101	101	101	101	115	115
Oswego	74	93	105	105	115	120	125	125
Otsego	93	115	115	116	116	116	116	125
Putnam	113	141	165	165	165	208	208	209
Rensselaer	82	102	102	102	102	102	102	121
Rockland	154	173	228	242	285	317	356	388
St. Lawrence	81	101	102	109	109	110	110	110
Saratoga	100	125	134	141	148	148	148	148
Schenectady	89	111	113	114	125	146	146	155
Schoharie	93	115	116	116	116	116	116	125
Schuyler	102	127	127	127	127	127	127	127
Seneca	81	101	101	101	106	106	107	157
Steuben	75	95	115	115	115	116	116	132
Suffolk	179	224	244	263	275	282	283	313
Sullivan	115	144	161	169	183	204	204	204
Tioga	66	82	95	95	95	95	99	99
Tompkins	104	130	137	141	146	163	163	184
Ulster	105	131	135	140	142	158	158	159
Warren	78	97	98	100	100	100	110	111
Washington	80	100	100	100	105	106	106	114
Wayne	93	115	116	116	116	116	116	116
Westchester	148	185	226	232	287	327	348	400
Wyoming	78	97	98	98	106	106	110	111
Yates	60	75	80	80	80	80	80	80

Maximum monthly shelter allowances (proposed
to take effect October 1, 1975), Exhibit to
Reixach affidavit of September 24

LOCAL AGENCY MAINTENANCE MONTHLY SHELTER ALLOWANCES WITH HEAT
By Family Size

	1	2	3	4	5	6	7	8+
Albany	138	171	179	187	189	191	193	195
Allegany	110	141	151	162	165	167	171	175
Broome	129	155	161	162	165	167	171	175
Cattaraugus	92	119	133	149	152	154	158	162
Cayuga	97	125	134	150	159	170	174	183
Chemung	85	103	104	117	118	125	132	143
Chemung	101	130	144	157	168	185	197	200
Chenango	91	118	143	154	167	169	173	190
Clinton	82	106	123	144	151	153	158	162
Columbia	126	161	170	182	185	188	192	195
Cortland	121	155	155	196	210	216	220	230
Delaware	101	130	142	153	154	158	162	171
Dutchess	131	157	183	195	208	211	215	218
Erie	121	153	159	164	169	170	172	173
Essex	102	133	142	159	163	166	167	177
Franklin	95	126	135	160	164	167	168	177
Fulton	105	135	145	156	159	161	165	169
Genesee	115	147	156	166	169	172	176	234
Greene	107	137	148	160	163	166	170	176
Hamilton	86	113	137	154	162	173	180	199
Herkimer	143	182	192	203	206	208	212	216
Jefferson	81	105	123	135	148	158	168	182
Lewis	93	120	131	146	152	156	175	180
Livingston	96	124	133	143	146	149	153	156
Madison	127	152	172	183	186	188	192	196
Monroe	131	165	181	192	195	204	208	221
Montgomery	99	127	137	148	153	155	159	196
Nassau	160	203	238	293	316	332	383	408
New York City	144	183	194	218	226	249	303	317
Niagara	101	126	135	141	153	155	197	199
Oranget	99	128	145	157	166	179	195	199
Onondaga	124	158	167	177	193	215	219	223
Ontario	124	159	172	182	185	199	203	206
Orange	141	180	206	217	220	232	236	239
Orleans	100	129	141	151	154	157	175	178
Oswego	96	121	145	155	168	176	185	188
Otsego	118	151	161	172	175	177	181	194
Putnam	135	172	205	215	218	264	268	272
Rensselaer	99	122	123	136	138	140	142	153
Rockland	173	220	261	284	330	364	406	441
St. Lawrence	106	136	147	165	168	171	175	179
Saratoga	125	160	179	197	207	209	213	217
Schenectady	106	131	139	148	161	184	186	197
Schoharie	118	151	161	172	175	177	181	194
Schuyler	124	158	167	177	180	183	187	190
Seneca	103	132	141	151	159	162	167	220
Stauben	101	130	160	171	174	177	181	201
Suffolk	198	251	277	305	320	329	333	356
Sullivan	140	179	206	225	242	265	269	273
Tioga	91	117	140	151	154	156	164	168
Tompkins	126	161	177	191	199	219	223	247
Ulster	127	162	175	190	195	214	218	222
Warren	103	132	143	156	159	161	175	180
Washington	102	131	140	150	153	162	166	177
Wayne	115	147	156	166	169	172	176	179
Westchester	167	212	259	274	332	334	398	453
Wyoming	103	132	143	154	165	167	175	180
Yates	82	106	120	130	133	136	140	143

Charts for local social services districts, Exhibit to
Reixach affidavit of September 24.

Albany COUNTY

No. Persons	(1) Rent w/o heat	+	(2) Fuel (12 mo.)	=	(3) Shelter	(4) Rent w/heat	(5) MA-PA
1	125		17		143	143	117 131
2	151		20		171	168	133 167
3	153		26		179	173	133 150
4	153		34		187	180	159 159
5	153		36		189	181	157 165
6	153		38		191	182	165 174
7	153		40		193	185	182 199
8	153		40		195	189	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

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Charts for local social services districts, Exhibit to
Reinach affidavit of September 24.

Allegheny COUNTY

<u>No. Persons</u>	<u>(1) Rent w/o heat</u>	<u>+</u>	<u>(2) Fuel (12 mo.)</u>	<u>=</u>	<u>(3) Shelter</u>	<u>(4) Rent w/heat</u>	<u>(5) MA-PA</u>
1	85		25		(110)	(110)	114 131
2	106		35		(141)	(141)	133 167
3	106		45		151	151	133 150
4	106		56		162	162	159 159
5	106		59		(165)?	(165)?	157 165
6	106		61		(167)	(167)	165 174
7	106		65		(171)	(171)	182 199
8	106		69		(175)	(175)	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

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Charts for local social services districts, Exhibit to
Reinach affidavit of September 24.

Broom COUNTY

No. Persons	(1) Rent w/o heat	+	(2) Fuel (12 mo.)	=	(3) Shelter	(4) Rent w/heat	(5) MA-PA
1	104		25		129	129	114 131
2	130		35		165	165	133 147
3	136		45		181	181	133 150
4	136		56		192	192	159 159
5	136		59		195	195	157 165
6	136		61		197	197	165 174
7	150		65		215	215	182 199
8	150		69		219	219	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

Charts for local social services districts, Exhibit to
Reixach affidavit of September 24.

Cattaraugus COUNTY

No. Persons	(1) Rent w/o heat	+	(2) Fuel (12 mo.)	=	(3) Shelter	(4) Rent w/heat	(5) MA PA
1	67		25		(92)	(92)	114 131
2	84		35		(119)	(119)	133 167
3	93		45		(138)	(138)	133 150
4	93		56		(149)	(149)	159 159
5	93		59		(152)	(152)	157 165
6	93		61		(154)	(154)	165 174
7	93		65		(158)	(158)	182 199
8	93		69		(162)	(162)	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

Charts for local social services districts, Exhibit to
Reixach affidavit of September 24.

Cayuga COUNTY

No. Persons	(1) Rent w/o heat	+	(2) Fuel (12 mo.)	=	(3) Shelter	(4) Rent w/heat	(5) MA-PA
1	75		22		(97)	(97)	114 131
2	94		31		(125)	(125)	133 167
3	94		40		(134)	(134)	133 150
4	100		50		(150)	(150)	159 159
5	106		53		(159)	(159)	157 165
6	114		56		(170)	(170)	165 174
7	114		60		(174)	(174)	182 199
8	120		63		(183)	(183)	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

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Charts for local social services districts, Exhibit to
Reinach affidavit of September 24.

Chautauque COUNTY

No. Persons	(1) Rent w/o heat	+	(2) Fuel (12 mo.)	=	(3) Shelter	(4) Rent w/heat	(5) MA-PA
1	72		13		(85)	(85)	114 131
2	90		13		(103)	(103)	133 167
3	90		14		(104)	(104)	133 150
4	96		21		(117)	(117)	159 159
5	96		22		(118)	(118)	157 165
6	101		24		(125)	(125)	165 174
7	107		25		(132)	(132)	182 199
8	157		26		(183)	(183)	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

Charts for local social services districts, Exhibit to
Reixach affidavit of September 24.

Chemung COUNTY

<u>N. Persons</u>	<u>(1) Rent w/o heat</u>	<u>+</u>	<u>(2) Fuel (12 mo.)</u>	<u>=</u>	<u>(3) Shelter</u>	<u>(4) Rent w/heat</u>	<u>(5) MA-PA</u>
1	79		22		(101)	(101)	114 131
2	99		31		(130)	(130)	133 167
3	104		40		(144)	(144)	133 150
4	107		50		(157)	(157)	159 159
5	115		53		168	168	157 165
6	129		56		185	185	165 174
7	137		60		(197)	(197)	182 199
8	137		63		(200)	(200)	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

Charts for local social services districts, Exhibit to
Reixach affidavit of September 24.

Chicago COUNTY

No. Persons	(1) Rent w/o heat	+	(2) Fuel (12 mc.)	=	(3) Shelter	(4) Rent w/heat	(5) MA-PA
1	66		25		(91)	(91)	114 131
2	83		35		(118)	(118)	133 167
3	98		45		(143)	(143)	133 150
4	95		56		(154)	(154)	159 159
5	108		59		167	167	157 165
6	105		61		(169)	(169)	165 174
7	108		65		(173)	(173)	182 199
8	121		69		(190)	(190)	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

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Charts for local social services districts, Exhibit to
Reinach affidavit of September 24.

Clinton COUNTY

No. Persons	(1) Rent w/o heat	+	(2) Fuel (12 mo.)	=	(3) Shelter	(4) Rent w/heat	(5) MA-PA
1	57		25		(82)	(82)	114 131
2	71		35		(106)	(106)	133 167
3	78		45		(123)	(123)	133 150
4	82		56		(144)	(144)	159 159
5	92		59		(151)	(151)	157 165
6	92		61		(153)	(153)	165 174
7	93		65		(158)	(158)	182 199
8	93		69		(162)	(162)	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

Charts for local social services districts, Exhibit to
 Affidavit of September 24.

Columbia COUNTY

No. Persons	(1) Rent w/o heat	+	(2) Fuel (12 mo.)	=	(3) Shelter	(4) Rent w/heat	(5) MA-PA
1	104		22		(126)	(126)	114 131
2	130		31		(161)	(161)	133 167
3	130		40		170	170	133 150
4	132		50		182	182	159 159
5	132		53		185	185	157 165
6	132		56		188	188	165 174
7	132		60		(192)	(192)	182 199
8	132		63		(195)	(195)	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

Charts for local social services districts, Exhibit to
Reinach affidavit of September 24.

Cortland COUNTY

No. Persons	(1) Rent w/o heat	+	(2) Fuel (12 mo.)	=	(3) Shelter	(4) Rent w/heat	(5) MA-PA
1	96		25		(121)	(121)	114 131
2	120		35		(155)	(155)	133 167
3	120		45		165	165	133 150
4	140		56		196	196	159 159
5	151		59		210	210	157 165
6	155		61		216	216	165 174
7	155		65		220	220	182 199
8	161		69		230	230	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

Charts for local social services districts, Exhibit to
Reixach affidavit of September 24.

Delaware COUNTY

<u>No. Persons</u>	<u>(1) Rent w/o heat</u> +	<u>(2) Fuel (12 mo.)</u> =	<u>(3) Shelter</u>	<u>(4) Re t w/heat</u>	<u>(5) MA-PA</u>
1	76	25	(101)	(101)	118 131
2	95	35	(130)	(130)	133 167
3	97	45	(142)	(142)	133 150
4	97	56	(153)	(153)	152 159
5	97	59	(156)	(156)	157 165
6	97	61	(158)	(158)	165 174
7	97	65	(162)	(162)	182 199
8	102	69	(171)	(171)	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

Charts for local social services districts, Exhibit to
Reixach affidavit of September 24.

Dutchess COUNTY

No. Persons	(1) Rent w/o heat	+	(2) Fuel (12 mo.)	=	(3) Shelter	(4) Rent w/heat	(5) MA-PA
1	109		22		(131)?	(131)?	114 131
2	136		31		(167)?	(167)?	133 167
3	143		40		183	183	133 150
4	145		50		195	195	159 159
5	155		53		208	208	157 165
6	155		56		211	211	165 174
7	155		60		215	215	182 199
8	155		63		218	218	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

Charts for local social services districts, Exhibit to
Reixach affidavit of September 24.

Eric COUNTY

No. Persons	(1) Rent w/o heat	+	(2) Fuel (12 mo.)	=	(3) Shelter	(4) Rent w/heat	(5) MA-PA
1	108		13		(121)	(121)	114 131
2	135		18		(153)	(153)	133 167
3	135		24		159	159	133 150
4	135		29		164	164	159 159
5	137		32		169	169	157 165
6	137		33		(170)	(170)	165 174
7	137		35		(172)	(172)	182 199
8	137		36		(173)	(173)	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

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Charts for local social services districts, Exhibit to
Reixach affidavit of September 24.

Essex COUNTY

No. Persons	(1) Rent w/o heat	+	(2) Fuel (12 mo.)	=	(3) Shelter	(4) Rent w/heat	(5) MA-PA
1	72		30		(102)	(102)	114 131
2	90		43		(133)	(133)	133 167
3	90		52		(142)	(142)	133 150
4	90		69		(159)?	(159)?	159 159
5	90		73		(163)	(163)	157 165
6	90		76		(166)	(166)	165 174
7	90		77		(167)	(167)	182 199
8	91		86		(177)	(177) -	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

Charts for local social services districts, Exhibit to
Reixach affidavit of September 24.

Franklin COUNTY

<u>No. Persons</u>	<u>(1) Rent w/o heat</u>	<u>+</u>	<u>(2) Fuel (12 mo.)</u>	<u>=</u>	<u>(3) Shelter</u>	<u>(4) Rent w/heat</u>	<u>(5) MA-PA</u>
1	66		30		(96)	(96)	114 131
2	83		43		(126)	(126)	133 167
3	83		52		(135)	(135)	133 150
4	91		69		160	160	159 159
5	91		73		(164)	(164)	157 165
6	91		76		(167)	(167)	165 174
7	91		77		(168)	(168)	182 199
8	91		86		(177)	(177)	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

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Charts for local social services districts, Exhibit to
Reinach affidavit of September 24.

Fulton COUNTY

No. Persons	(1) Rent w/o heat	+	(2) Fuel (12 mo.)	=	(3) Shelter	(4) Rent w/heat	(5) MA-PA
1	80		25		(105)	(105)	114 131
2	100		35		(135)	(135)	133 167
3	100		45		(145)	(145)	133 150
4	100		56		(156)	(156)	159 159
5	100		59		(159)	(159)	157 165
6	100		61		(161)	(161)	165 174
7	100		65		(165)	(165)	182 199
8	100		69		(169)	(169)	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

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Charts for local social services districts, Exhibit to
Reixach affidavit of September 24.

Genesee COUNTY

No. Persons	(1) Rent w/o heat	+	(2) Fuel (12 mo.)	=	(3) Shelter	(4) Rent w/heat	(5) MA-PA
1	93		22		(115)	(115)	114 131
2	116		31		(147)	(147)	133 167
3	116		40		156	156	133 150
4	116		50		166	166	159 159
5	116		53		169	169	157 165
6	116		56		(172)	(172)	165 174
7	116		60		(176)	(176)	182 199
8	171		63		234	234	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

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Charts for local social services districts, Exhibit to
Reinach affidavit of September 24.

Greene COUNTY

No. Persons	(1) Rent w/o heat	+	(2) Fuel (12 mo.)	=	(3) Shelter	(4) Rent w/heat	(5) MA-PA
1	85		22		(107)	(107)	114 131
2	106		31		(137)	(137)	133 167
3	108		40		(148)	(148)	133 150
4	110		50		160	160	150 159
5	110		53		(163)	(163)	157 165
6	110		56		(166)	(166)	165 174
7	110		60		(170)	(170)	182 199
8	113		63		(176)	(176)	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

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Charts for local social services districts, Exhibit to
Reixach affidavit of September 24.

Hamilton COUNTY

<u>No. Persons</u>	<u>(1) Rent w/o heat</u>	<u>+</u>	<u>(2) Fuel (12 mo.)</u>	<u>=</u>	<u>(3) Shelter</u>	<u>(4) Rent w/heat</u>	<u>(5) MA-PA</u>
1	56		30		(86)	(79)	118 131
2	70		43		(113)	(104)	133 167
3	85		52		(137)	(137)	133 150
4	85		69		(154)	(154)	159 159
5	89		73		(162)	(146)	157 165
6	97		76		(173)	(157)	165 174
7	103		77		(180)	(164)	182 199
8	113		86		(199)	(180)	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

Charts for local social services districts, Exhibit to
Reixach affidavit of September 24.

Herkimer COUNTY

No. Persons	(1) Rent w/o heat	+	(2) Fuel (12 mo.)	=	(3) Shelter	(4) Rent w/heat	(5) MA-PA
1	118		25		143	143	118 131
2	147		35		182	182	133 167
3	147		45		192	192	133 150
4	147		56		203	203	159 159
5	147		59		206	206	157 165
6	147		61		208	208	165 174
7	147		65		212	212	182 199
8	147		69		216	216	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

Charts for local social services districts, Exhibit to
Reinach affidavit of September 24.

Jefferson COUNTY

No. Persons	(1) Rent w/o heat	+	(2) Fuel (12 mo.)	=	(3) Shelter	(4) Rent w/heat	(5) MA-PA
1	56		25		(81)	(81)	110 131
2	70		35		(105)	(105)	133 167
3	78		45		(123)	(123)	133 150
4	79		56		(135)	(135)	159 159
5	89		59		(148)	(148)	157 165
6	97		61		(158)	(158)	165 174
7	103		65		(168)	(168)	182 199
8	113		69		(182)	(182)	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

Charts for local social service districts, Exhibit to
Reinach affidavit of September 24.

Lewis COUNTY

No. Persons	(1) Rent w/o heat +	(2) Fuel (12 mo.) +	(3) Shelter	(4) Rent w/heat	(5) MA-PA
1	68	25	(93)	(93)	117 131
2	85	35	(120)	(120)	133 167
3	92	45	(131)	(131)	133 150
4	90	56	(146)	(146)	159 159
5	93	59	(152)	(152)	157 165
6	95	61	(156)	(156)	165 174
7	110	65	(175)	(175)	182 199
8	111	69	(180)	(180)	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

Charts for local social services districts, Exhibit to
Reixach affidavit of September 24.

Livingston COUNTY

No. Persons	(1) Rent w/o heat	+	(2) Fuel (12 mo.)	=	(3) Shelter	(4) Rent w/heat	(5) MA-PA
1	74		22		(96)	(96)	114 131
2	93		31		(124)	(124)	133 167
3	93		40		(133)	(133)	133 150
4	93		50		(143)	(143)	159 159
5	93		53		(146)	(146)	157 165
6	93		56		(149)	(149)	165 174
7	93		60		(153)	(153)	182 199
8	93		63		(156)	(156)	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

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Charts for local social services districts, Exhibit to
Reixach affidavit of September 24.

Madison COUNTY

<u>No. Persons</u>	<u>(1) Rent w/o heat</u> +	<u>(2) Fuel (12 mo.)</u> *	<u>(3) Shelter</u>	<u>(4) Rent w/heat</u>	<u>(5) MA-PA</u>
1	102	25	(127)	(127)	114 131
2	127	35	(162)	(162)	133 167
3	127	45	172	172	133 150
4	127	56	183	183	159 159
5	127	59	186	186	157 165
6	127	61	188	188	165 174
7	127	65	(192)	(192)	182 199
8	127	69	(196)	(196)	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

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Charts for local social services districts, Exhibit to
Reixach affidavit of September 24.

Marion COUNTY

No. Persons	(1) Rent w/o heat	+	(2) Fuel (12 mo.)	=	(3) Shelter	(4) Rent w/heat	(5) MA-PA
1	115		16		(131)?	(131)?	114 131
2	144		21		(165)	(165)	133 167
3	152		29		181	181	133 150
4	156		36		192	192	159 159
5	157		38		195	195	157 165
6	165		39		204	204	165 174
7	165		43		208	208	182 199
8	176		45		221	221	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

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Charts for local social services districts, Exhibit to
Reixach affidavit of September 24.

Montgomery COUNTY

No. Persons	(1) Rent w/o heat	+	(2) Fuel (12 mo.)	=	(3) Shelter	(4) Rent w/heat	(5) MA-PA
1	74		25		(99)	(99)	114 131
2	92		35		(127)	(127)	133 167
3	92		45		(137)	(137)	133 150
4	92		56		(148)	(148)	159 159
5	94		59		(153)	(153)	157 165
6	94		61		(155)	(155)	165 174
7	94		65		(159)	(159)	182 199
8	127		69		(196)	(196)	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

Charts for local social services districts, Exhibit to
Reixach affidavit of September 24.

Nassau COUNTY

<u>No. Persons</u>	<u>(1) Rent w/o heat</u>	<u>+</u>	<u>(2) Fuel (12 mo.)</u>	<u>=</u>	<u>(3) Shelter</u>	<u>(4) Rent w/heat</u>	<u>(5) MA-PA</u>
1	141		19		160	160	114 131
2	176		27		203	203	133 167
3	225		33		258	258	133 150
4	251		42		293	293	159 159
5	271		45		316	316	157 165
6	285		47		332	332	165 174
7	333		50		383	383	182 197
8	355		53		408	408	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

Charts for local social services districts, Exhibit to
Reixach affidavit of September 24.

New York City COUNTY

No. Persons	(1) Rent w/o heat	+	(2) Fuel (12 mo.)	=	(3) Shelter	(4) Rent w/heat	(5) MA-PA
1	128		16		144	144	114 131
2	160		22		183	183	133 167
3	169		25		194	194	133 150
4	186		32		218	218	159 159
5	189		37		226	226	157 165
6	209		40		249	249	165 174
7	241		42		303	303	182 199
8	273		44		317	317	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

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Charts for local social services districts, Exhibit to
Reixach affidavit of September 24.

Niagara COUNTY

No. Persons	(1) Rent w/o heat	+	(2) Fuel (12 mo.)	=	(3) Shelter	(4) Rent w/heat	(5) MA-PA
1	88		13		(101)	(101)	114 131
2	110		16		(126)	(126)	133 167
3	114		21		(135)	(135)	133 150
4	115		26		(141)	(141)	159 159
5	124		29		(153)	(153)	157 165
6	126		29		(155)	(155)	165 174
7	165		32		(197)	(197)	182 199
8	165		34		(199)	(199)	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

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Charts for local social services districts, Exhibit to
Reixach affidavit of September 24.

Orinda COUNTY

No. Persons	(1) Rent w/o heat	+	(2) Fuel (12 mo.)	=	(3) Shelter	(4) Rent w/heat	(5) MA-PA
1	74		25		(99)	(99)	114 131
2	93		35		(128)	(128)	133 167
3	100		45		(145)	(145)	133 150
4	101		56		(157)	(157)	159 159
5	107		59		166	166	157 165
6	118		61		179	179	165 174
7	130		65		(195)	(195)	182 199
8	130		69		(199)	(199)	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

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Charts for local social services districts, Exhibit to
Reixach affidavit of September 24.

Onondaga COUNTY

No. Persons	(1) Rent w/o heat	+	(2) Fuel (12 mo.)	=	(3) Shelter	(4) Rent w/heat	(5) MA-PA
1	102		22		124	124	114 131
2	127		31		158	158	133 167
3	127		40		167	167	133 150
4	121		50		171	171	139 159
5	140		53		193	193	157 165
6	159		56		215	215	165 174
7	159		60		219	219	182 199
8	160		63		223	223	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

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Charts for local social services districts, Exhibit to
Reixach affidavit of September 24.

Ontario COUNTY

No. Persons	(1) Rent w/o heat	+	(2) Fuel (12 mo.)	=	(3) Shelter	(4) Rent w/heat	(5) MA-PA
1	102		22		124	124	114 131
2	128		31		159	159	133 167
3	132		40		172	172	133 150
4	132		50		182	182	159 159
5	132		53		185	185	157 165
6	143		56		199	199	165 174
7	143		60		203	203	182 199
8	143		63		206	206 -	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

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Charts for local social services districts, Exhibit to
Reixach affidavit of September 24.

Orange COUNTY

<u>No. Persons</u>	<u>(1) Rent w/o heat</u> +	<u>(2) Fuel (12 mo.)</u> =	<u>(3) Shelter</u>	<u>(4) Rent w/heat</u>	<u>(5) MA-PA</u>
1	119	22	141	141	114 131
2	149	31	180	180	133 167
3	166	40	206	206	133 150
4	167	50	217	217	159 159
5	167	53	220	220	157 165
6	176	56	232	232	165 174
7	176	60	236	236	182 199
8	176	63	239	239	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

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Charts for local social services districts, Exhibit to
Reixach affidavit of September 24.

Orleans COUNTY

No. Persons	(1) Rent w/o heat	+	(2) Fuel (12 mo.)	=	(3) Shelter	(4) Rent w/heat	(5) MA-PA
1							118
			22		(100)	(100)	131
2							133
	98		31		(129)	(129)	167
3							133
	101		40		(141)	(141)	150
4							159
	101		50		(151)	(151)	159
5							157
	101		53		(154)	(154)	165
6							165
	101		56		(157)	(157)	174
7							182
	115		60		(175)	(175)	199
8							182
	115		63		(178)	(178)	207

Circle all cases where col. 3 or col. 4 is less than col. 5

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Charts for local social services districts, Exhibit to
Reinach affidavit of September 24.

Oswego COUNTY

No. Persons	(1) Rent w/o heat	+	(2) Fuel (12 mo.)	=	(3) Shelter	(4) Rent w/heat	(5) MA-PA
1	74		22		(96)	(96)	114 131
2	93		31		(124)	(124)	133 167
3	105		40		(145)	(145)	133 150
4	105		50		(155)	(155)	159 159
5	115		53		168	168	159 165
6	120		56		176	176	165 174
7	125		60		(185)	(185)	182 199
8	125		63		(188)	(188)	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

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Charts for local social services districts, Exhibit to
Reinach affidavit of September 24.

Otsego COUNTY

No. Persons	(1) Rent w/o heat +	(2) Fuel (12 mo.) =	(3) Shelter	(4) Rent w/heat	(5) MA-PA
1	93	25	(118)	(118)	114 117
2	116	35	(151)	(151)	133 167
3	116	45	161	161	133 150
4	116	56	172	172	159 159
5	116	59	175	175	157 165
6	116	61	177	177	165 174
7	116	65	(181)	(181)	182 199
8	125	69	(194)	(194)	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

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Charts for local social services districts, Exhibit to
Reixach affidavit of September 24.

Putnam COUNTY

No. Persons	(1) Rent w/o heat	+	(2) Fuel (12 mo.)	=	(3) Shelter	(4) Rent w/heat	(5) MA-PA
1	113		22		135	135	114 131
2	141		31		172	172	133 167
3	165		40		205	205	133 150
4	165		50		215	215	159 159
5	165		53		218	218	157 165
6	208		56		264	264	165 174
7	208		60		268	268	182 199
8	209		63		272	272	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

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Charts for local social services districts, Exhibit to
Reixach affidavit of September 24.

Danvers COUNTY

<u>No. Persons</u>	<u>(1) Rent w/o heat</u> +	<u>(2) Fuel (12 mo.)</u> =	<u>(3) Shelter</u>	<u>(4) Rent w/heat</u>	<u>(5) MA-PA</u>
1	82	17	(99)	(99)	114 131
2	102	20	(122)	(122)	123 167
3	102	26	(128)	(128)	133 150
4	102	34	(136)	(136)	155 159
5	102	36	(138)	(138)	157 165
6	102	38	(140)	(140)	165 174
7	102	40	(142)	(142)	182 199
8	121	42	(163)	(163)	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

Charts for local social services districts, Exhibit to
Reixach affidavit of September 24.

Rockland COUNTY

<u>No. Persons</u>	<u>(1) Rent w/o heat</u> +	<u>(2) Fuel (12 mo.)</u>	<u>(3) Shelter</u>	<u>(4) Rent w/heat</u>	<u>(5) MA-PA</u>
1	154	19	173	173	114 131
2	193	27	220	220	133 167
3	228	33	261	261	133 150
4	242	42	284	284	159 159
5	285	45	330	330	157 165
6	317	47	364	364	165 174
7	356	50	406	406	182 199
8	388	53	441	441	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

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Charts for local social services districts, Exhibit to
Reixach affidavit of September 24.

St. Lawrence COUNTY

<u>No. Persons</u>	<u>(1) Rent w/o heat</u>	<u>+</u>	<u>(2) Fuel (12 mo.)</u>	<u>=</u>	<u>(3) Shelter</u>	<u>(4) Rent w/heat</u>	<u>(5) MA-PA</u>
1	81		25		(106)	(106)	114 131
2	101		35		(136)	(136)	133 167
3	102		45		(147)	(147)	133 150
4	109		56		165	165	159 159
5	109		59		168	168	157 165
6	110		61		(171)	(171)	165 174
7	110		65		(175)	(175)	182 199
8	110		69		(179)	(179)	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

Charts for local social services districts, Exhibit to
Reixach affidavit of September 24.

Santa Clara COUNTY

No. Persons	(1) Rent w/o heat	+	(2) Fuel (12 mo.)	=	(3) Shelter	(4) Rent w/heat	(5) MA-PA
1	100		25		125	125	114 131
2	125		35		160	160	133 167
3	134		45		179	179	133 150
4	141		56		197	197	159 159
5	148		59		207	207	157 165
6	18		61		209	209	165 174
7	148		65		213	213	182 199
8	148		69		217	217	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

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Charts for local social services districts, Exhibit to
Reixach affidavit of September 24.

Schenectady COUNTY

No. Persons	(1) Rent w/o heat	+	(2) Fuel (12 mo.)	=	(3) Shelter	(4) Rent w/heat	(5) MA-PA
1	89		17		(106)	(106)	114 131
2	111		20		(131)	(131)	133 167
3	113		26		(139)	(139)	133 150
4	114		34		(148)	(148)	158 159
5	125		36		(161)	(161)	157 165
6	146		38		184	184	165 174
7	146		40		(186)	(186)	182 199
8	155		42		(197)	(197)	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

Charts for local social services districts, Exhibit to
Reixach affidavit of September 24.

Schenectady COUNTY

No. Persons	(1) Rent w/o heat	+	(2) Fuel (12 mo.)	=	(3) Shelter	(4) Rent w/heat	(5) MA-PA
1	93		25		(118)	(118)	117 131
2	116		35		(151)	(151)	133 167
3	116		45		161	161	133 150
4	116		56		172	172	159 159
5	116		59		175	175	157 165
6	116		61		177	177	165 174
7	116		65		(181)	(181)	182 199
8	125		69		(194)	(194)	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

-193-

Charts for local social services districts, Exhibit to
Reixach affidavit of September 24.

Schuyler COUNTY

No. Persons	(1) Rent w/o heat	+	(2) Fuel (12 mo.)	=	(3) Shelter	(4) Rent w/heat	(5) MA-PA
1	102		22		124	124	114 131
2	127		31		158	158	133 167
3	137		40		167	167	133 150
4	137		50		177	171	159 159
5	127		53		180	180	157 165
6	127		56		183	183	165 174
7	27		60		187	187	182 199
8	127		63		190	190	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

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Charts for local social services districts, Exhibit to
Reinach affidavit of September 24.

Schenectady COUNTY

<u>No. Persons</u>	<u>(1) Rent w/o heat</u>	<u>+</u>	<u>(2) Fuel (12 mo.)</u>	<u>=</u>	<u>(3) Shelter</u>	<u>(4) Rent w/heat</u>	<u>(5) MA-PA</u>
1	81		21		(102)	(102)	114 131
2	101		31		(132)	(132)	133 167
3	101		40		(141)	(141)	133 150
4	101		50		(151)	(151)	159 159
5	106		53		(159)	(159)	157 165
6	106		56		(162)	(162)	165 174
7	107		60		(167)	(167)	182 199
8	157		63		220	220	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

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Charts for local social services districts, Exhibit to
Reixach affidavit of September 24.

Steuben COUNTY

No. Persons	(1) Rent w/o heat	+	(2) Fuel (12 mo.)	=	(3) Shelter	(4) Rent w/heat	(5) MA-PA
1	76		25		(101)	(101)	114 131
2	93		33		(130)	(130)	133 167
3	115		45		160	160	133 150
4	115		56		171	171	159 159
5	115		59		174	174	157 165
6	116		61		177	177	165 174
7	116		65		(181)	(181)	182 199
8	132		69		(201)	(201)	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

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Charts for local social services districts, Exhibit to
Reixach affidavit of September 24.

Suffolk COUNTY

<u>No. Persons</u>	<u>(1) Rent w/o heat</u>	<u>+</u>	<u>(2) Fuel (12 mo.)</u>	<u>=</u>	<u>(3) Shelter</u>	<u>(4) Rent w/heat</u>	<u>(5) MA-PA</u>
1	179		19		198	198	111 - 131
2	234		27		251	251	133 167
3	244		33		277	277	133 150
4	263		42		305	305	159 159
5	275		45		320	320	157 165
6	282		47		329	329	165 174
7	283		50		333	333	182 199
8	313		53		366	366	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

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Charts for local social services districts, Exhibit to
Reixach affidavit of September 24.

Sullivan COUNTY

No. Persons	(1) Rent w/o heat	+	(2) Fuel (12 mo.)	=	(3) Shelter	(4) Rent w/heat	(5) MA-PA
1							114
	115		25		140	140	131
2							133
	144		35		179	179	167
3							133
	161		45		206	206	150
4							159
	169		56		225	225	159
5							157
	183		39		242	242	165
6							165
	204		61		265	265	174
7							182
	204		65		269	269	199
8							182
	204		69		273	273	207

Circle all cases where col. 3 or col. 4 is less than col. 5

Charts for local social services districts, Exhibit to
Reixach affidavit of September 24.

Tioga COUNTY

<u>No. Persons</u>	<u>(1) Rent w/o heat</u>	<u>+</u>	<u>(2) Fuel (12 mo.)</u>	<u>=</u>	<u>(3) Shelter</u>	<u>(4) Rent w/heat</u>	<u>(5) MA-PA</u>
1	66		25		(91)	(91)	114 131
2	82		35		(117)	(117)	133 167
3	95		45		(140)	(140)	133 150
4	95		56		(151)	(151)	159 159
5	95		59		(154)	(154)	157 165
6	95		61		(156)	(156)	165 174
7	99		65		(164)	(164)	182 199
8	99		69		(168)	(168)	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

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Charts for local social services districts, Exhibit to
Reixach affidavit of September 24.

Tompkins COUNTY

<u>No. Persons</u>	<u>(1) Rent w/o heat</u>	<u>+</u>	<u>(2) Fuel (12 mo.)</u>	<u>=</u>	<u>(3) Shelter</u>	<u>(4) Rent w/heat</u>	<u>(5) MA-PA</u>
1							114
	104		22		126	126	131
2							133
	130		31		161	161	167
3							133
	137		40		177	177	150
4							159
	141		50		191	191	159
5							157
	146		53		199	191	165
6							165
	162		56		219	219	174
7							182
	163		60		223	223	199
8							182
	184		63		247	247	207

Circle all cases where col. 3 or col. 4 is less than col. 5

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Charts for local social services districts, Exhibit to
Reixach affidavit of September 24.

Ulster COUNTY

No. Persons	(1) Rent w/o heat	+	(2) Fuel (12 mo.)	=	(3) Shelter	(4) Rent w/heat	(5) MA-PA
1	105		22		127	127	114 131
2	131		31		162	162	133 167
3	135		40		175	175	133 150
4	140		50		190	190	159 159
5	142		53		195	195	157 165
6	158		56		214	214	165 174
7	158		60		218	218	182 199
8	159		63		222	222	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

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Charts for local social services districts, Exhibit to
Reixach affidavit of September 24.

Warren COUNTY

No. Persons	(1) Rent w/o heat	+	(2) Fuel (12 mo.)	=	(3) Shelter	(4) Rent w/heat	(5) MA-PA
1	78		25		(103)	(103)	114 131
2	97		35		(132)	(132)	133 167
3	98		45		(143)	(143)	133 150
4	100		56		(156)	(156)	159 159
5	100		59		(159)	(159)	157 165
6	100		61		(161)	(161)	165 174
7	110		65		(175)	(175)	182 199
8	111		69		(180)	(180)	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

Charts for local social services districts, Exhibit to
Reixach affidavit of September 24.

Washington COUNTY

<u>No. Persons</u>	<u>(1) Rent w/o heat</u> +	<u>(2) Fuel (12 mo.)</u> =	<u>(3) Shelter</u>	<u>(4) Rent w/heat</u>	<u>(5) MA-PA</u>
1					114
	80	22	(102)	(102)	131
					133
	100	3	(131)	(131)	167
3					133
	102	40	(140)	(140)	150
4					159
	100	50	(150)	(150)	159
5					157
	105	53	(158)	(158)	165
6					165
	106	56	(162)	(162)	174
7					182
	106	60	(166)	(166)	199
8					182
	114	63	(177)	(177)	207

Circle all cases where col. 3 or col. 4 is less than col. 5

Charts for local social services districts, Exhibit to
Baikach affidavit of September 24.

Wayne COUNTY

No. Persons	(1) Rent w/o heat	+	(2) Fuel (12 mo.)	=	(3) Shelter	(4) Rent w/heat	(5) MA-PA
1	93		22		(115)	(115)	114 131
2	116		31		(147)	(147)	133 167
3	116		40		156	156	133 150
4	116		50		166	166	159 159
5	116		53		169	169	157 165
6	116		56		(172)	(172)	165 174
7	116		60		(176)	(176)	182 199
8	116		63		(179)	(179)	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

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Charts for local social services districts, Exhibit to
Reixach affidavit of September 24.

Westchester COUNTY

<u>No. Persons</u>	<u>(1) Rent w/o heat</u>	<u>+</u>	<u>(2) Fuel (12 mo.)</u>	<u>=</u>	<u>(3) Shelter</u>	<u>(4) Rent w/heat</u>	<u>(5) MA-PA</u>
1	148		19		167	167	114 131
2	185		27		212	212	133 167
3	226		33		259	259	133 150
4	232		42		274	274	159 159
5	287		45		332	332	157 165
6	287		47		334	334	165 174
7	342		50		398	398	182 199
8	400		53		453	453	192 207

Circle all cases where col. 3 or col. 4 is less than col. 5

205

Charts for local social services districts, Exhibit to
Reixach affidavit of September 24.

Wyoming COUNTY

No. Persons	(1) Rent w/o heat	+	(2) Fuel (12 mo.)	=	(3) Shelter	(4) Rent w/heat	(5) MA-PA
1	78		25		(103)	(103)	114 131
2	97		35		(132)	(132)	133 167
3	98		45		(143)	(143)	133 150
4	98		56		(154)	(154)	159 159
5	106		59		(165)?	(165)?	157 165
6	106		61		(167)	(167)	165 174
7	110		65		(175)	(175)	182 199
8	111		69		(180)	(180)	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

286

Charts for local social services districts, Exhibit to
Reinach affidavit of September 24.

Yates COUNTY

No. Persons	(1) Rent w/o heat	+	(2) Fuel (12 mo.)	=	(3) Shelter	(4) Rent w/heat	(5) MA-PA
1	60		22		(82)	(82)	119 131
2	75		31		(106)	(106)	133 167
3	80		40		(120)	(120)	133 150
4	80		50		(130)	(130)	159 159
5	80		53		(133)	(133)	157 165
6	80		56		(136)	(136)	165 174
7	80		60		(140)	(140)	182 199
8	80		63		(143)	(143)	182 207

Circle all cases where col. 3 or col. 4 is less than col. 5

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Table Showing Number of Medical Assistance Recipients and Expenditures in New York State, Exhibit to Peixach affidavit of September 24.

Table 5
MEDICAL ASSISTANCE
Beneficiaries, expenditures and average payment, by social services district
May 1975

Social services district	Beneficiaries			Medical expenditures	Average payment per beneficiary
	Total	Subsistence and Medical	Medical Only		
New York State	1,215,617	1,017,682	197,937	\$216,619,800	\$202.68
New York City	801,529	731,589	69,940	173,150,977	216.00
Rest of State	413,990	285,793	127,997	73,468,823	177.47
Large Urban Counties					
Erie	228,855	170,413	58,423	41,695,108	182.21
Hamilton	50,077	31,737	18,290	7,233,399	144.45
Montgomery	25,315	20,052	6,293	4,688,980	177.98
Nassau	33,993	28,995	9,988	11,061,640	289.76
Orange	24,725	17,053	7,672	4,033,537	163.11
Putnam	39,553	32,315	7,238	7,127,101	180.19
Westchester	49,153	40,211	8,942	7,550,461	153.61
Other Counties	185,154	115,580	69,574	31,773,715	171.61
Albany	11,478	8,142	3,336	2,667,514	234.16
Allegany	2,426	1,569	857	287,229	118.40
Broome	8,876	5,811	3,025	1,393,080	157.66
Cattaraugus	4,137	2,506	1,631	535,019	129.33
Cayuga	3,886	2,713	1,173	587,074	151.07
Chemung	5,730	4,192	1,538	1,107,069	193.21
Chenango	5,053	3,658	1,405	792,061	156.44
Columbia	2,745	1,520	1,228	322,377	117.32
Cortland	4,498	1,269	3,229	460,937	102.48
Delaware	1,855	999	856	370,373	199.66
Dutchess	2,889	1,923	966	294,268	101.66
Essex	1,621	965	656	282,743	171.43
Franklin	4,733	3,273	1,660	1,130,624	229.26
Fulton	2,475	1,458	977	355,738	143.73
Genesee	3,577	2,193	1,384	458,627	128.22
Greene	2,516	1,357	1,159	461,896	181.42
Hamilton	1,707	1,187	520	307,064	179.89
Herkimer	1,540	998	542	334,967	220.11
Jefferson	154	84	70	21,407	139.01
Lewis	2,453	1,170	1,283	367,323	141.59
Livingston	4,976	3,149	1,827	798,171	160.40
Madison	991	435	556	168,745	170.28
Montgomery	1,702	1,176	526	280,867	165.02
Nassau	2,454	1,582	872	369,436	150.54
Orange	1,717	1,108	609	372,283	216.62
Putnam	5,035	3,641	1,394	1,397,672	277.59
Saratoga	11,836	8,126	3,710	1,647,477	139.19
Schenectady	2,447	819	1,628	550,382	226.92
St. Lawrence	7,533	4,474	3,059	1,513,676	200.94
Ulster	2,054	1,182	872	255,856	124.56
Warren	4,473	3,212	1,261	570,183	127.47
Washington	2,358	1,430	928	421,048	170.56
Westchester	1,238	710	578	276,112	210.26
Yamont	5,850	3,723	2,127	970,918	165.97
Rockland	8,596	4,280	4,316	2,131,521	247.97
St. Lawrence	6,355	4,019	2,336	849,560	133.68
Saratoga	3,451	1,380	2,071	611,312	177.14
Schenectady	5,006	3,043	1,963	1,356,556	270.99
Schoharie	862	519	343	88,787	109.00
Schuyler	739	466	273	145,184	184.01
Saratoga	1,094	766	328	190,534	171.16
Stauben	4,339	2,516	1,823	513,599	118.37
Sullivan	3,122	2,059	1,063	550,151	176.22
Tioga	1,692	920	772	238,211	140.79
Tompkins	3,028	2,182	846	390,448	128.94
Ulster	8,018	5,513	2,505	1,247,869	155.63
Warren	2,693	1,572	1,121	316,717	117.61
Washington	2,195	1,163	1,032	341,590	155.62
Wayne	2,788	2,001	787	429,193	153.94
Wyoming	1,181	552	629	145,309	123.04
Yates	679	405	274	98,065	144.43

Affidavit of Eleanor A. Sochocki, NYSDSS Program Specialist, sworn to October 3, 1975, in opposition to class action determination.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARION AITCHISON, et al.,

Plaintiffs,

-vs-

ABE LAVINE, et al.,

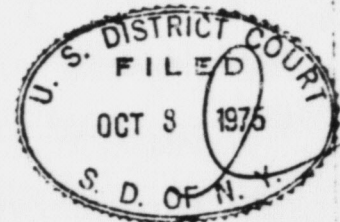
Defendants.

75 Civ. 1224

MEF

AFFIDAVIT

STATE OF NEW YORK) ss:
COUNTY OF ALBANY)



ELEANOR A. SOCHOCKI, being duly sworn, deposes and says:

1. I am employed by the New York State Department of Social Services, 1450 Western Avenue, Albany, New York, in the position of Principal Social Services Program Specialist, Division of Income Maintenance. This affidavit is prepared in opposition to plaintiff's motion for class action status in the above captioned case.

2. Rene H. Reixach's Supplemental Affidavit for plaintiff, dated September 24, 1975, contains two shelter allowance schedules and 58 charts based in part on those shelter allowance schedules. These schedules are not accurate for one person households. The schedules used by Mr. Reixach were the proposed shelter allowance schedules at one time, but never went into effect. The schedules that actually went into effect on October 1, 1975 are attached hereto as Exhibit A. In all districts the actual shelter allowance for one person households exceeds the figures used by Mr. Reixach. It follows that all calculations based on the incorrect schedules are also incorrect.

Eleanor A. Sochocki
Eleanor A. Sochocki

Sworn to before me this
3rd day of October, 1975

Thomas O. Murray
NOTARY PUBLIC
THOMAS O. MURRAY
Notary Public in the State of New York
Qualified in Ontario County
My Commission Expires Mar. 20, 1976

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Maximum monthly shelter allowances, as
promulgated October 17, 1975, Exhibit A
to Sochocki affidavit

1975

LOCAL AGENCY MAXIMUM MONTHLY SHELTER ALLOWANCES WITH HEAT

By Family Size

	1	2	3	4	5	6	7	8+
Albany	143	171	179	187	189	191	193	195
Allegany	113	141	151	162	165	167	171	175
Broome	136	165	181	192	195	197	215	219
Cattaraugus	94	119	138	149	152	154	158	162
Cayuga	100	125	134	150	159	170	174	183
Chautauqua	83	106	111	122	125	130	139	191
Chemung	106	130	144	157	168	185	197	200
Chenango	93	118	143	154	167	169	173	190
Clinton	83	106	123	144	151	153	158	162
Columbia	130	161	170	182	185	188	192	195
Cortland	127	155	165	196	210	216	220	230
Delaware	103	130	142	153	156	158	162	171
Dutchess	135	167	183	195	208	211	215	218
Eric	126	153	159	164	169	170	172	173
Essex	104	133	142	159	163	166	167	177
Franklin	101	126	135	160	164	167	168	177
Fulton	110	135	145	156	159	161	165	169
Gonosee	119	147	156	166	169	172	176	234
Greene	110	137	148	160	163	166	170	176
Hamilton	86	113	137	154	162	173	180	199
Herkimer	147	182	192	203	206	208	212	216
Jefferson	81	105	123	135	148	158	168	182
Lewis	95	120	131	146	152	156	175	180
Livingston	99	124	133	143	146	149	153	156
Madison	130	162	172	183	186	188	192	196
Monroe	136	165	181	192	195	204	208	221
Montgomery	101	127	137	148	153	155	159	196
Nassau	169	203	258	293	316	332	383	408
New York City	152	183	194	218	226	249	303	317
Niagara	104	126	135	141	153	155	197	199
Oneida	101	128	145	157	166	179	195	199
Onondaga	128	153	167	177	193	215	219	223
Ontario	128	159	172	182	185	199	203	206
Orange	149	180	206	217	220	232	236	239
Orleans	105	129	141	151	154	157	175	178
Oswego	101	124	145	155	168	176	185	188
Otsego	121	151	161	172	175	177	181	194
Putnam	140	172	205	215	218	264	268	272
Rensselaer	101	122	128	136	138	140	142	163
Rockland	183	220	261	284	330	364	406	441
St. Lawrence	108	136	147	165	168	171	175	179
Saratoga	129	160	179	197	207	209	213	217
Schenectady	109	131	139	143	161	184	186	197
Schoharie	121	151	161	172	175	177	181	194
Schuyler	127	153	167	177	180	183	187	190

Maximum onthly shelter allowances, as
promulgated October 1, 1975, Exhibit A
to Sochocki affidavit

1975

Local Agency Maximum Monthly Shelter Allowances With Heat (Con't)

By Family Size

	1	2	3	4	5	6	7	8+
Seneca	108	132	141	151	159	162	167	220
Stauben	104	130	160	171	174	177	181	201
Suffolk	205	251	277	305	320	329	333	366
Sullivan	145	179	203	225	242	265	269	273
Tioga	92	117	140	151	154	155	164	168
Tompkins	130	161	177	191	199	219	223	247
Ulster	131	162	175	190	195	214	218	222
Warren	107	132	143	156	159	161	175	190
Washington	107	131	140	150	153	162	166	177
Wayne	118	147	156	166	169	172	176	179
Westchester	174	212	259	274	332	334	398	453
Wyoming	107	132	143	154	165	167	175	180
Yates	86	106	120	130	133	136	140	143

9/17/75

Maximum monthly shelter allowances, as
promulgated October 1, 1975, Exhibit A
to Sochocki affidavit

1975

LOCAL AGENCY MAXIMUM MONTHLY SHELTER ALLOWANCES WITHOUT HEAT

By Family Size

	1	2	3	4	5	6	7	8+
Albany	126	151	153	153	153	153	153	153
Allegany	88	105	106	106	106	106	106	106
Broome	111	130	136	136	136	136	150	150
Cattaraugus	69	84	93	93	93	93	93	93
Cayuga	78	94	94	100	106	114	114	120
Chautauque	75	90	90	96	96	101	107	137
Chemung	84	99	104	107	115	129	137	137
Chemung	68	83	98	98	108	108	108	121
Clinton	58	71	78	83	92	92	93	93
Columbia	108	130	130	132	132	132	132	132
Cortland	102	120	120	140	151	155	155	161
Delaware	78	95	97	97	97	97	97	102
Dutchess	113	136	143	145	155	155	155	155
Eric	113	135	135	135	137	137	137	137
Essex	74	90	90	90	90	90	90	91
Franklin	71	83	83	91	91	91	91	91
Rulton	85	100	100	100	100	100	100	100
Genesee	97	116	116	116	116	116	116	171
Greene	88	106	108	110	110	110	110	113
Hamilton	56	70	85	85	89	97	103	113
Herkimer	122	147	147	147	147	147	147	147
Jefferson	56	70	78	79	89	97	103	113
Lewis	70	85	86	90	93	95	110	111
Livingston	77	93	93	93	93	93	93	93
Madison	105	127	127	127	127	127	127	127
Monroe	120	144	152	156	157	165	165	176
Montgomery	76	92	92	92	94	94	94	127
Nassau	150	176	225	251	271	285	333	355
New York City	136	160	169	186	189	209	261	273
Niagara	91	110	114	115	124	126	165	165
Oneida	76	93	100	101	107	118	130	130
Onondaga	106	127	127	127	140	159	159	160
Ontario	106	128	132	132	132	143	143	143
Orange	127	149	166	167	167	176	176	176
Orleans	83	98	101	101	101	101	115	115
Oswego	79	93	105	105	115	120	125	125
Otsego	96	116	116	116	116	116	116	125
Putnam	118	141	165	165	165	208	208	209
Rensselaer	84	102	102	102	102	102	102	121
Rockland	164	193	228	242	285	317	356	388
St. Lawrence	83	101	102	109	109	110	110	110
Saratoga	104	125	134	141	148	143	148	148
Schenectady	92	111	113	114	125	146	146	155
Schoharie	96	116	116	116	116	116	116	125
Schuyler	105	127	127	127	127	127	127	127

Maximum monthly shelter allowances, as
promulgated October 1, 1975, Exhibit A
to Sochocki affidavit

1975

Local Agency Maximum Monthly Shelter Allowances Without Heat..(Con't)

By Family Size

	1	2	3	4	5	6	7	8+
Seneca	85	101	101	101	106	106	107	157
Stauben	79	95	115	115	115	116	116	132
Suffolk	186	224	244	263	275	282	283	313
Sullivan	120	144	161	169	183	204	204	204
Tioga	67	82	95	95	95	95	99	99
Tompkins	108	130	137	141	146	163	163	184
Ulster	109	131	135	140	142	158	158	159
Warren	82	97	98	100	100	100	110	111
Washington	85	100	100	100	105	106	106	114
Wayne	96	116	116	116	116	116	116	116
Westchester	155	185	226	232	267	267	348	400
Wyoming	82	97	98	98	106	106	110	111
Yates	64	75	80	80	80	80	80	80

9/17/75

Supplemental Affidavit of Rene H. Reixach,
sworn to October 15, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARION AITCHISON, et al.,
Plaintiffs,

-vs-

STEPHEN BERGER, et al.,
Defendants.

75 Civ. 1224
MEF

SUPPLEMENTAL
AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF MONROE) ss:

RENE H. REIXACH, being duly sworn, deposes and
says:

1. I am a member of the Bar of this Court and one of the attorneys for the plaintiffs herein; I make this affidavit to further supplement my supplemental affidavit dated September 24, 1975 analyzing the scope of the discrepancy between the public assistance maximum allowances and the medical assistance allowances for the 58 social services districts in New York City.

2. On October 1, 1975, I received a copy of New York Department of Social Services administrative letters nos. 75 ADM-98 and 98A, dated September 12, 1975 and September 18, 1975. Annexed hereto as Exhibits A-1 through A-4 are the rent schedules finally promulgated by the defendant Stephen Berger. For one person families the figures are in many counties slightly higher than they were in the rent schedule annexed to my September 24, 1975 supplemental affidavit, which was obtained from that defendant's

own submission to this Court in Nero v. Lavine, 75 Civ. 1024 (see Supplemental Class Action Affidavit dated August 27, 1975, ¶6). Additionally, those rent schedules were further modified by the increases shown in Administrative Letter 75 ADM-98A, a copy of which is annexed as Exhibit B.

3. Rather than again recomputing the charts for the 58 social services districts which have heretofore been submitted three times, I have simply analyzed the effects of these increases to see if they change the categorization by county set forth in my prior supplemental affidavit. They do not, except to increase the class size.

4. In Broome County the \$129 maximum monthly shelter allowance for one person is now \$136, so that some one person families will now be class members if their shelter grant would be between \$131 and \$136. Likewise in Dutchess and Monroe Counties, where the old maximum of \$131 was just at the borderline of class eligibility the new \$136 figure will make certain one person families class members. In Ulster County the old \$127 maximum is now \$131, right at the borderline of class membership but single persons will be out of the class. Elsewhere, while the new schedules may affect the numbers of class members (only by increasing them), they do not affect the category in which the single person family falls. Even in the four counties enumerated the categorization of the county will stay the same; each is still one of the 29 where the medical assistance allowance can exceed the public assistance allowance at some family sizes.

Supplemental Affidavit of Rene H. Reixach,
sworn to October 15, 1975

5. While these schedules have obviously been in considerable flux, the submissions of the Commissioner, such as the most recent Affidavit of Eleanor A. Sochocki, sworn to October 3, 1975, have added little to clarifying the scope of the class by simply asserting that prior submissions are "incorrect." While the most up-to-date information is obviously in the hands of the Commissioner, we shall further attempt to correctly state the contours of the class by noting yet another relevant change, which the Commissioner has so far ignored. Insofar as there have been any further changes we leave them to the Commissioner to explicate in full along with their effect on the contours of the class, if any.

6. Based upon information received in conjunction with a state court case in which my office is participating (Ciulla v. Lavine (Sup. Ct. Monroe Co.)), copies of which are annexed as Exhibits C-1 through C-7, it appears that Commissioner Berger has created split fuel schedules, one for natural gas heat and the other for all other sources of heat. This change has resulted in an increase in the fuel allowance for non-gas users in seven counties, namely Albany, Chautauqua, Erie, Monroe, Niagara, Rensselaer, and Schenectady.*

* In the course of my review of these schedules it also came to my attention that the \$21 fuel allowance shown in prior affidavits for Seneca County single person families should be \$22; that does not result in any material change in that county.

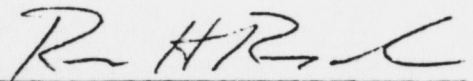
7. The effects of these increases are to further increase the scope of the class. In Albany County the increases are sufficient to bring some persons in families of 7 or 8 who heat with gas into the class; previously the maximum rent allowance plus fuel allowance was not high enough for them to be class members. In Monroe County 1 and 2 person families can likewise be in the class after the increase. Those two counties thus move from the category of twenty-nine (29) counties where class membership could exist at only some family sizes to those where it can exist at all family sizes, so that the latter category is expanded to include ten (10) counties plus New York City. Niagara County, in turn, moves from the category of counties where class membership is never possible to the category where it is possible at some family sizes (namely families of three or more). After those adjustments the category where class membership is never possible has nineteen (19) counties and the category where class membership is possible but not at all family sizes has twenty-eight (28) counties. In Schenectady County the family sizes at which class membership is impossible shrinks to families of 1, 2 and 4; and in Erie County class membership remains impossible only for families of 8.

8. As we have demonstrated, such increases only serve to increase the scope of the class. Likewise the seemingly ceaseless series of changes further undercuts the Commissioner's contention that his medical assistance allowances are averages;

Supplemental Affidavit of Rene H. Reixach,
sworn to October 15, 1975

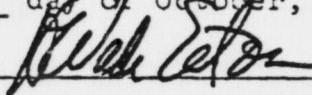
certainly for the last several months no one, including apparently the Commissioner, could have been in a position to compute such averages.

WHEREFORE, your deponent prays that the relief, including class action status, prayed for by the plaintiffs be granted.



RENE H. REIXACH

Sworn to before me this
15th day of October, 1975.



K. WADE EATON
Notary Public in the State of New York
MONROE COUNTY, N. Y.
Commission Expires March 30, 1976

Monthly Maximum Shelter Allowances,
effective October 15, 1975, Exhibit A to
Reixach affidavit of October 15

LOCAL AGENCY MAXIMUM MONTHLY SHELTER ALLOWANCES WITHOUT HEAT

By Family Size

	1	2	3	4	5	6	7	8+
Albany	126	151	153	153	153	153	153	153
Allegany	88	106	106	106	106	106	106	106
Broome	108	130	136	136	136	136	150	150
Cattaraugus	69	84	93	93	93	93	93	93
Cayuga	78	94	94	100	106	114	114	120
Chemung	75	90	90	96	96	101	107	157
Chenango	82	99	104	107	115	129	137	137
Clinton	68	83	98	98	108	108	108	121
Columbia	58	71	78	88	92	92	93	93
Cortland	108	130	130	132	132	132	132	132
Delaware	100	120	120	140	151	155	155	161
Dutchess	78	95	97	97	97	97	97	102
Erie	113	136	143	145	155	155	155	155
Essex	113	135	135	135	137	137	137	137
Franklin	74	90	90	90	90	90	90	91
Fulton	69	83	83	91	91	91	91	91
Genesee	83	100	100	100	100	100	100	100
Greene	97	116	116	116	116	116	116	171
Hamilton	88	106	103	110	110	110	110	113
Herkimer	56	70	85	85	89	97	103	113
Jefferson	122	147	147	147	147	147	147	147
Lewis	56	70	78	79	89	97	103	113
Livingston	70	85	86	90	93	95	110	111
Madison	77	93	93	93	93	93	93	93
Monroe	105	127	127	127	127	127	127	127
Montgomery	120	144	152	156	157	165	165	176
Nassau	76	92	92	92	94	94	94	127
New York City	146	176	225	251	271	285	333	355
Niagara	133	160	169	186	189	209	261	273
Oneida	91	110	114	115	124	126	165	165
Onondaga	76	93	100	101	107	118	130	130
Ontario	106	127	127	127	140	159	159	160
Orange	106	128	132	132	132	143	143	143
Orleans	124	149	166	167	167	176	176	176
Oswego	81	98	101	101	101	101	115	115
Otsego	77	93	105	105	115	120	125	125
Putnam	96	116	116	116	116	116	116	125
Rensselaer	118	141	165	165	165	208	208	209
Rockland	84	102	102	102	102	102	102	121
St. Lawrence	160	193	228	242	285	317	356	388
Saratoga	83	101	102	109	109	110	110	110
Schenectady	104	125	134	141	148	148	148	148
Schoharie	92	111	113	114	125	146	146	155
Schuyler	96	116	116	116	116	116	116	125
	105	127	127	127	127	127	127	127

Monthly Maximum Shelter Allowances,
effective October 15, 1975, Exhibit A to
Reixach affidavit of October 15

1975

Local Agency Maximum Monthly Shelter Allowances Without Heat (Con't)

	By Family Size							
	1	2	3	4	5	6	7	8+
Seneca	83	101	101	101	106	106	107	157
Steuben	79	95	115	115	115	116	116	132
Suffolk	186	224	244	263	275	282	283	313
Sullivan	120	144	161	169	183	204	204	204
Tioga	67	82	95	95	95	95	99	99
Tompkins	108	130	137	141	146	163	163	184
Ulster	109	131	135	140	142	158	158	159
Warren	80	97	98	100	100	100	110	111
Washington	83	100	100	100	105	106	106	114
Wayne	96	116	116	116	116	116	116	116
Westchester	155	185	226	232	287	287	348	400
Wyoming	80	97	98	98	106	106	110	111
Yates	62	75	80	80	80	80	80	80

Monthly Maximum Shelter Allowances,
effective October 15, 1975, Exhibit A to
Reixach affidavit of October 15

1975

LOCAL AGENCY MAXIMUM MONTHLY SHELTER ALLOWANCES WITH HEAT

By Family Size

	1	2	3	4	5	6	7	8+
Albany	143	171	179	187	189	191	193	195
Allegany	113	141	151	162	165	167	171	175
Broome	133	165	181	192	195	197	215	219
Cattaraugus	94	119	138	149	152	154	158	162
Cayuga	100	125	134	150	159	170	174	183
Chautauque	88	106	111	122	125	130	139	191
Chemung	104	130	144	157	168	185	197	200
Crenango	93	113	143	154	167	169	173	190
Clinton	83	106	123	144	151	153	158	162
Columbia	130	161	170	182	185	188	192	195
Cortland	125	155	165	196	210	216	220	230
Delaware	103	130	142	153	156	158	162	171
Dutchess	135	167	183	195	208	211	215	218
Erie	126	153	159	164	169	170	172	173
Essex	104	133	142	159	163	166	167	177
Franklin	99	126	135	160	164	167	168	177
Fulton	103	135	145	156	159	161	165	169
Genesee	119	147	156	166	169	172	176	234
Greene	110	137	148	160	163	166	170	176
Hamilton	86	113	137	154	162	173	180	199
Herkimer	147	182	192	203	206	208	212	216
Jefferson	81	105	123	135	148	158	168	182
Lewis	95	120	131	146	152	156	175	180
Livingston	99	124	133	143	146	149	153	156
Madison	130	162	172	183	186	188	192	196
Monroe	136	165	181	192	195	204	208	221
Montgomery	101	127	137	148	153	155	159	196
Nassau	165	203	253	293	316	332	383	408
New York City	149	183	194	218	226	249	303	317
Niagara	104	126	135	141	153	155	197	199
Oneida	101	123	145	157	166	179	195	199
Onondaga	128	158	167	177	193	215	219	223
Ontario	128	159	172	182	185	199	203	206
Orange	146	180	206	217	220	232	236	239
Orleans	103	129	141	151	154	157	175	178
Oswego	99	124	145	155	168	176	185	188
Otsego	121	151	161	172	175	177	181	194
Putnam	140	172	205	215	218	264	268	272
Rensselaer	101	122	123	136	138	140	142	163
Rockland	179	220	261	284	330	364	406	441
St. Lawrence	108	136	147	165	168	171	175	179
Saratoga	129	160	179	197	207	209	213	217
Schenectady	109	131	139	148	161	184	186	197
Schoharie	121	151	161	172	175	177	181	194
Schryler	127	158	167	177	180	183	187	190

Monthly Maximum Shelter Allowances,
effective October 15, 1975, Exhibit A to
Reixach affidavit of October 15

1975

Local Agency Maximum Monthly Shelter Allowances With Heat (Con't)

By Family Size

	1	2	3	4	5	6	7	8+
Seneca	105	132	141	151	159	162	167	220
Steuben	104	130	150	171	174	177	181	201
Suffolk	205	251	277	305	320	329	333	366
Sullivan	145	179	206	225	242	265	269	273
Tioga	92	117	140	151	154	156	164	168
Tompkins	130	161	177	191	199	219	223	247
Ulster	131	162	175	190	195	214	218	222
Warren	105	132	143	156	159	161	175	180
Washington	105	131	140	150	158	162	166	177
Wayne	118	147	156	166	169	172	176	179
Westchester	174	212	259	274	332	334	398	453
Wyoming	105	132	143	154	165	167	175	180
Yates	84	106	120	130	133	136	140	143

Administrative Letter No. 75 ADM-98A correcting computational error in monthly maximum shelter allowances for single prison households, Exhibit B to Peixach affidavit of October 15.

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES
1450 WESTERN AVENUE
ALBANY, NEW YORK 12203

ADMINISTRATIVE LETTER

Effective: October 1, 1975

TRANSMITTAL NO.: 75 ADM-98A

TO: Commissioners of Social Services

DATE: Sept. 18, 1975

SUBJECT: Correction of 75 ADM-98
Revised Shelter Allowances -
Policy and Schedules

SUGGESTED
DISTRIBUTION: All Public Assistance Staff
All Accounting Staff
All Medical Assistance Staff

Transmittal No. 75 ADM-98 contained a computational error in the maximum shelter allowances for a one-person household in sixteen social services districts. In each case correction of this error results in an increase in the maximum allowable rent for this household size.

The corrected maximum allowances for single-person households are:

<u>District</u>	<u>Without Heat</u>	<u>With Heat</u>
New York City	136	152
Broome	111	136
Chemung	84	106
Cortland	102	127
Franklin	71	101
Fulton	85	110
Nassau	150	169
Orange	127	149
Orleans	83	105
Oswego	79	101
Rockland	164	183
Saratoga	86	108
Warren	82	107
Washington	85	107
Wyoming	82	107
Yates	64	86

Please make the appropriate changes on the schedules attached to 75 ADM-98.

<u>FILING REFERENCE</u>	
Prev. Comm.	Dept. Reg.
75 ADM-98	352.3(a)
Bulletin Re.	
B. 134	

Philip L. Toia
Executive Deputy Commissioner

FORM DSS-206 (5/74)

Exhibit B
-223-

Monthly Allowances for Natural Gas and
other Fuel promulgated October 1, 1975,
Exhibit C to Reixach affidavit of
October 15

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES



1450 WESTERN AVENUE • ALBANY 12243

STEPHEN BERGER
Commissioner

September 18, 1975

Paul Harrison
Assistant Attorney General
Department of Law
300 Terminal Building
65 Broad Street
Rochester, New York 14614

RECEIVED

SEP 22 1975

DEPARTMENT OF LAW
ROCHESTER OFFICE

Re: Ciulla v. Lavine

Dear Mr. Harrison:

Enclosed is the New York State Department of Social Services' proposed revision of 18 NYCRR 352.5(a). The proposal creates two fuel schedules: one for natural gas and the other for fuels other than natural gas. The schedules have been distributed to the various county social services districts for comment. Barring unforeseen developments, the proposal will be filed by October 1, 1975 and in effect October 1, 1975.

Please note that Chautauque County does not appear in Schedule SA-6a. It should appear with the group beginning with Albany County.

Sincerely,

Clifford Royael
Director, Litigation Bureau

John Wiley

by: John Wiley
Assistant Attorney

JH/rb
Enc.

Exhibit C-1

-224-

Monthly Allowances for Natural Gas and
other Fuel

STATE DEPARTMENT OF SOCIAL SERVICES

ALBANY, NEW YORK

Pursuant to the provisions of Sections 20 and 34 of the Social Services Law, I, Stephen Berger, Commissioner of Social Services, do hereby amend in part, as hereinafter indicated, Section 352.5 of the Official Regulations of the State Department of Social Services, being Chapter II of Title 18 NYCRR, effective October 1, 1975.

Subdivision (a) of section 352.5 is hereby repealed, and a new subdivision (a) is hereby added to read as follows:

C-2

- 225 -

Monthly Allowances for Natural Gas and
other Fuel

352.5 Fuel-for-heating allowance (a) Each social services district shall grant an allowance for fuel for heating when it is not included in the cost of shelter in accordance with the appropriate following schedule.

Schedule SA-6 a

Monthly Allowances for Fuel for Heating: Other than Natural Gas

New York City

# of persons	1	2	3	4	5	6	7	8+
12 month	\$16	23	25	32	37	40	42	44
8 month	\$24	34	37	47	56	59	63	66

Counties of: Essex, Franklin, Hamilton

# of persons	1	2	3	4	5	6	7	8+
12 month	\$30	43	52	69	73	76	77	86
8 month	\$44	64	77	103	109	114	116	129

Counties of: Allegany, Broome, Cattaraugus, Chenango, Clinton, Cortland, Delaware, Erie, Fulton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Otsego, St. Lawrence, Saratoga, Schoharie, Steuben, Sullivan, Tioga, Warren, Wyoming

# of persons	1	2	3	4	5	6	7	8+
12 month	\$25	35	45	56	59	61	65	69
8 month	\$37	52	67	83	88	92	98	103

Counties of: Albany, Cayuga, Chemung, Columbia, Dutchess, Genesee, Greene, Livingston, Monroe, Niagara, Onondaga, Ontario, Orange, Orleans, Oswego, Putnam, Rensselaer, Schenectady, Schuylor, Seneca, Tompkins, Ulster, Washington, Wayne, Yates

# of persons	1	2	3	4	5	6	7	8+
12 month	\$22	31	40	50	53	56	60	63
8 month	\$33	47	59	74	79	84	89	94

C-3

-226-

Monthly Allowances for Natural Gas and
other Fuel

- 3 -

Counties of: Nassau, Rockland, Suffolk, Westchester

# of persons	1	2	3	4	5	6	7	8+
12 month	\$19	27	33	42	45	47	50	53
8 month	\$28	40	49	63	67	70	74	79

Schedule SA-6 b

Monthly Allowances for Fuel for Heating: Natural Gas

Counties of: Allegany, Cattaraugus, Erie, Steuben, Wyoming

# of persons	1	2	3	4	5	6	7	8+
12 month	\$13	18	24	29	32	33	35	36
8 month	\$20	27	35	44	47	49	52	54

County of: Monroe

# of persons	1	2	3	4	5	6	7	8+
12 month	\$16	21	29	36	38	39	43	45
8 month	\$23	32	43	54	57	58	64	68

Counties of: Genesee, Niagara, Chautauqua

# of persons	1	2	3	4	5	6	7	8+
12 month	\$13	16	21	26	29	29	32	34
8 month	\$19	24	32	39	43	44	47	50

Counties of: Albany, Columbia, Onondaga, Oswego, Rensselaer, Schenectady,
Washington

# of persons	1	2	3	4	5	6	7	8+
12 month	\$17	20	26	34	36	38	40	42
8 month	\$25	30	39	50	54	56	60	63

C-4
-227-

Monthly Allowances for Natural Gas and
Other Fuel

- 4 -

County of: Tioga

# of persons	1	2	3	4	5	6	7	8+
12 month	\$14	24	26	28	34	37	38	40
8 month	\$21	35	39	42	50	55	57	60

County of: Cortland

# of persons	1	2	3	4	5	6	7	8+
12 month	\$13	19	26	31	34	36	39	40
8 month	\$20	28	39	46	50	54	58	60

Counties of: Fulton, Herkimer, Jefferson, Madison, Montgomery, Oneida, St. Lawrence, Saratoga, Warren

# of persons	1	2	3	4	5	6	7	8+
12 month	\$16	23	31	35	38	40	42	46
8 month	\$24	34	46	53	57	60	63	69

County of: Chenango

# of persons	1	2	3	4	5	6	7	8+
12 month	\$17	23	29	35	38	41	43	43
8 month	\$26	35	44	53	57	61	64	65

Counties of: Broome, Delaware

# of persons	1	2	3	4	5	6	7	8+
12 month	\$14	21	26	32	32	35	37	39
8 month	\$20	31	39	48	49	52	55	58

C-5
-228-

Monthly Allowances for Natural Gas and
other Fuel

- 5 -

County of: Orleans

# of persons	1	2	3	4	5	6	7	8+
12 month	\$15	22	30	36	39	40	43	45
8 month	\$23	35	45	55	58	60	65	67

Counties of: Cayuga, Chemung, Livingston, Ontario, Otsego, Seneca, Tompkins,
Wayne, Yates

# of persons	1	2	3	4	5	6	7	8+
12 month	\$14	18	27	32	34	36	39	40
8 month	\$21	28	41	48	52	53	58	60

Counties of: Dutchess, Greene, Orange, Ulster

# of persons	1	2	3	4	5	6	7	8+
12 month	\$21	28	41	50	53	55	60	62
8 month	\$32	42	62	75	80	82	90	92

County of: Schuyler

# of persons	1	2	3	4	5	6	7	8+
12 month	\$12	16	24	29	31	32	35	36
8 month	\$17	23	36	43	46	48	52	54

Counties of: Nassau, Suffolk, New York City

# of persons	1	2	3	4	5	6	7	8+
12 month	\$14	21	27	35	36	39	41	42
8 month	\$21	31	41	52	55	58	61	63

County of: Westchester

# of persons	1	2	3	4	5	6	7	8+
12 month	\$12	18	24	29	31	32	34	36
8 month	\$18	27	36	44	46	49	52	54

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Monthly Allowances for Natural Gas and
other Fuel

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County of: Rockland

# of persons	1	2	3	4	5	6	7	8+
12 month	\$10	14	18	23	24	25	27	28
8 month	\$15	21	27	35	36	38	40	42

Dated:

Signed: _____

COMMISSIONER

This is to certify that this is the original
of an order of the State Department of Social
Services, made on
amending in part Section 352.5 of the Official
Regulations of the State Department of Social
Services, being Title 18, NYCRR.

Dated:

Signed: _____

COMMISSIONER

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Simplified Methods for Determining Needs,
HEW 1964, Defendant Berger's Exhibit 1.

Simplified Methods for Determining Needs

by Gladys O. White
Home Economics Consultant
Division of Welfare Services

U.S. DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
Welfare Administration
Bureau of Family Services

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Simplified Methods for Determining Needs

FOREWORD

Many State agencies are concerned about complicated procedures for determination of need in the public assistance programs and are seeking ways to simplify the process. This document discusses principles of simplification of standards for requirements which States may apply in their individual State situations.

When both income and resources must be taken into account, the need determination is complex. Therefore, the presentation of cost standards for requirements and the ways of handling resources under the terms of existing laws should be as simple as possible. A State may have a very simple method for workers to use in arriving at total requirements but, because of methods of handling resources, a very complicated system of determining need.

The Federal Handbook of Public Assistance Administration suggests simplified methods for arriving at net income for employed persons. At best, however, the calculation of each individual's income and resources perhaps cannot be quite as simple as the determination of requirements based on budgetary standards to be used for groups of people. Again, programs such as those reaching the aged, blind, and families with dependent children, require different methods of handling income.

To present individual cost standards by a fair and simplified method, certain facts in each State situation must be known. A few of these facts and the use to be made of them are discussed in this publication.

Fred H. Steininger

Fred H. Steininger
Director
Bureau of Family Services
Welfare Administration

Simplified Methods for Determining Needs

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Simplified Methods for Determining Needs

METHODS

Although several methods of presenting cost standards for workers to use are available to States, the method chosen must be statewide in its application. It is strongly recommended that, if at all feasible, identical cost standards also be used statewide. Any variation in cost standards by areas within a State must be justified by facts.

The following three forms may suggest to States methods which they may use to simplify the process of determining need.

Each form is designed to serve all public assistance programs. A common standard is used because the basic requirements of all people are the same regardless of which program serves them.

The amount of total requirements should be printed on each form for the worker to use as a budget form. Each form also has space for computations and verification of income. Instructions are printed on the back of each form.

Even though cost standards may vary by areas, all counties within the State must use the same form.

For example, if a State uses fuel cost standards by areas, counties can include these areas in the total requirements. Each form showing different total requirements will need to be numbered separately, with the particular areas to which the form applies listed on the back.

Methods I and III (pp. 2 and 4) include cost figures for all of the basic items of requirements. If a recipient's need for any of these items is fully met each month without cost to him, the value to be shown as income should never be in excess of the amount included for the item in requirements. Method II (p. 3) differs from Methods I and III by permitting the worker to enter the amount of the standard for shelter and special needs.

Simplified Methods for Determining Needs

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Method I

Method I combines cost standards for all basic requirements. 1/ The worker may use the column appropriate to the number of persons in the assistance group. 2/

The amount of total basic requirements can be printed on the form in the space where dollar marks appear on the "dummy" form. The form will then serve as a budget form for the worker to use without having to transfer the figures. This form does NOT provide for special need items.

Method I is applicable when State policies for need determination relate only to a single assistance group, without consideration of other assistance groups in the same household or of non-needy members of the same household.

The net monthly income can be computed on the form and subtracted from the total requirements to obtain the amount of the deficit and grant.

The first column is provided for one adult and is divided by type of living arrangement. The cost standards are usually higher for a person who lives alone.

The State should provide an amount (in parentheses under "Children Only") for a child who does not live with parents, or whose caretaker is not needy--for example, when the child is budgeted only for food, clothing, personal incidentals, and school costs.

- 1/ Includes clothing, electricity, food, fuel, household equipment, household supplies, medicine-chest supplies, personal incidentals, phone, school costs, shelter, transportation, and water.
- 2/ Assistance group, as used in this paper, means those persons in a single public assistance program whose requirements are included in the determination of need.

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Simplified Methods for Determining Needs

No. _____
e _____

Date _____
Case Name _____
Case Number _____

METHOD I

Requirements and Budget Form for OAA, AB, AFDC, APTD 1/

	Number of Persons in Assistance Group										Children Only	
	1 Adult		2	3	4	5	6	7	8	Over 8 ()		
	Alone	Not Alone										
Total Requirements	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$X(No. of Children)	
Less Income												
Deficit												
Grant												

MONTHLY INCOME

VERIFICATION OF INCOME

Wages _____

OASI _____

Pension _____

Other _____

Total _____

Instructions: See reverse side

1/ Includes clothing, electricity, food, fuel, household equipment, household supplies, medicine-chest supplies, personal incidentals, phone, school costs, shelter, transportation, and water.

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Simplified Methods for Determining Needs

Instructions:

Circle number of persons in assistance group (line A). Compute income in space provided at bottom of page, showing verifications. Enter total income (line C). Subtract from total requirements (line B) to obtain the deficit (line D) and the amount of the grant (line E).

- Note:
1. For each person in excess of 8, show the number in the parenthesis in the "over 8" column and add \$_____ for each such person to the printed figure already provided.
 2. For children who do not live with parents, or whose caretaker is not needy, that is, for children who are budgeted only for food, clothing, school costs, and personal incidentals, multiply the number of children by the amount provided in the last column.

Simplified Methods for Determining Needs

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Method II

Method II combines cost standards for all basic requirements ^{1/} except shelter and includes space for special needs. As in Method I, the worker may use the cost appropriate to the number of persons in the assistance group.

The amount of total basic requirements (except shelter) can be printed on the form in the space where dollar marks appear on the "dummy" form. The form will then serve as a budget sheet for the worker to add shelter cost to the other requirements without having to transfer the figures.

Method II, like Method I, is applicable when State policies for need determination relate only to a single assistance group, without consideration of other assistance groups in the same household or of non-needy members of the same household.

The net monthly income can be computed on the form and subtracted from the total requirements to obtain the amount of the deficit and grant.

The first column is provided for one adult and is divided by type of living arrangement. The cost standards are usually higher for a person who lives alone.

An amount is provided (in parentheses under "Children Only") for a child who does not live with parents, or whose caretaker is not needy--for example, when the child is budgeted only for food, clothing, personal incidentals, and school costs.

^{1/} Includes clothing, electricity, food, fuel, household equipment, household supplies, medicine-chest supplies, personal incidentals, phone, school costs, transportation, and water.

Simplified Methods for Determining Needs

Form No. _____

Date _____
Case Name _____
Case Number _____

METHOD II

Requirements and Budget Form for OAA, AB, AFDC, APTD 1/

A.	Number of Persons in Assistance Group										Children Only
	1 Adult		2	3	4	5	6	7	8	Over 8 (.)	
	Alone	Not Alone									
B. Requirements	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$X(No. of Children)
C. Shelter											
D. Special Needs											
E. Total											
F. Less Income											
G. Deficit											
H. Grant											

MONTHLY INCOME

Wages _____
OASI _____
Pension _____
Other _____
Total _____

VERIFICATION OF INCOME

Instructions: See reverse side

1/ Includes clothing, electricity, food, fuel, household equipment, household supplies, medicine-chest supplies, personal incidentals, phone, school costs, transportation, and water.

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Simplified Methods for Determining Needs

Instructions:

Circle number of persons in assistance group (line A). Enter the amount of standard for shelter and special needs (if any) on lines C and D. Add lines B, C, and D to arrive at total (line E). Compute income in space provided at bottom of page, showing verifications. Enter total income (line F). Subtract from total requirements (line E) to obtain the deficit (line G) and the amount of the grant (line H).

- Note: 1. For each person in excess of 8, show the number in the parenthesis in the "over 8" column and add \$_____ for each such person to the printed figure already provided.
2. For children who do not live with parents, or whose caretaker is not needy, that is, for children who are budgeted only for food, clothing, school costs, and personal incidentals, multiply the number of children by the amount provided in the last column.

Simplified Methods for Determining Needs

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Method III

Method III combines cost standards for all basic requirements ^{1/} but provides a different technique for using the requirements in arriving at the amount of assistance to be paid.

Many States budget the requirements for the assistance group according to the number of persons in the total household; that is, when others in the household cook and eat with the assistance group and share common household expenses, these expenses are prorated accordingly. Method III is designed to take this into account. The same method is applicable when two or more assistance groups live as one household.

For example, in method III if the AFDC group is composed of 3 persons who live in a household with 3 other persons, the worker will circle the figure 3 in the left stub and also circle the amount of money (dollar marks on "dummy" form) shown under 6 following across from 3 and record in the computation column on the right hand side of the form. This amount of money is for the assistance group of 3 but is different from the amount shown under the household of 3 because the group lives with 3 other people--a total household of 6. If the assistance group of 3 lives in a household alone, the worker will circle the amount under a household of 3 and record in the computation column.

This form, like Method I, has been designed to provide for the amount of the total requirements to be printed on the form. It is necessary for the worker to enter the amount in the computation column. Space is provided on the back of the form for verification of income. Space may be provided on this form for the shelter and special need items if they are not included in total requirements (see Method II).

^{1/} Includes clothing, electricity, food, fuel, household equipment, household supplies, medicine-chest supplies, personal incidentals, phone, school costs, shelter, transportation, water.

Form No. _____
Date _____

METHOD III

Requirements and Budget Form for OAA, AB, AFDC, APTD 1/

Date _____
Case Name _____
Case Number _____

Number of Persons in Assistance Group	Living in a Household Composed of									
	1	2	3	4	5	6	7	8	9	10 or more
1	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
2		\$	\$	\$	\$	\$	\$	\$	\$	\$
3			\$	\$	\$	\$	\$	\$	\$	\$
4				\$	\$	\$	\$	\$	\$	\$
5					\$	\$	\$	\$	\$	\$
6						\$	\$	\$	\$	\$
7							\$	\$	\$	\$
8								\$	\$	\$

Computations
Circle Number of Persons in
Assistance Group
Circle Size of Household;
Enter This Amount Below:

Total Basics _____

Additional over _____
8 ()

Income _____

Deficit _____

Grant _____

Monthly Income _____

Wages _____

OASI _____

Pension _____

Other _____

Total Income _____

1/ Includes clothing, electricity, food, fuel, household equipment, household supplies, medicine-chest supplies, personal incidentals, phone, school costs, shelter, transportation, water.

Instructions: See reverse side.

Simplified Methods for Determining Needs

Instructions:

NOTE: 1. For each person in excess of 8, show the number in parenthesis in the space provided under computations and add \$ ____ for each such person to the amount shown for the assistance group of 8.

2. For children who do not live with parents, or whose caretaker is not needy, that is, for children who are budgeted only for food, clothing, school costs, and personal incidentals, multiply the number of children by the amount provided in the last column.

Simplified Methods for Determining Needs

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Simplified Methods for Determining Needs

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Simplification of Requirements

To combine the cost standards for the basic requirements ^{1/} by these simplified methods, a State must have certain information about the assistance caseload and the State characteristics which influence the development of standards.

Family Composition

It is necessary to know the composition of the families served by the program. ^{2/} For example, if the family of 3 in a given State is most frequently composed of an adult, a child of 7-12, and a child of 13-18, use the food cost figures best suited to those ages, as they appear in the U.S. Department of Agriculture publication, Family Economics Review. ^{3/} Amounts for all other basic items can then be added to this grouping. Comparable determinations will need to be made for families of 1, 2, 4, 5, 6, 7, or 8. An adjustment factor may be used for families with more than 8 persons.

The cost of living is usually higher for one person living alone than for one who shares expenses with others. Food, for example, costs more per person for one person living alone than for any other size household. These higher costs should be recognized in arriving at total requirements.

In order to use the same cost standards for the four programs (OAA, AB, AFDC, APTD), the family of two probably should have personal requirements calculated for two adults in the combined totals. By this method the requirements would be applicable both in the adult programs and in AFDC for a caretaker and one child of any age.

A combined total for the cost of common household items such as utilities, household supplies, and equipment is relatively easy to determine by family size. By contrast, a combined total for personal items, because these costs vary by age of family members, is more difficult to pre-add.

^{1/} Clothing, electricity, food, fuel, household equipment, household supplies, personal incidentals, medicine chest supplies, phone, school cost, shelter, transportation, and water.

^{2/} Tables 1, 17, 25, 29; Characteristics of Families Receiving Aid to Families with Dependent Children, November-December 1961, U.S. Department of Health, Education, and Welfare, Welfare Administration, Bureau of Family Services, Division of Program Statistics and Analysis, April 1963.

Table 4, Characteristics and Financial Circumstances of Recipients of Old-Age Assistance, 1960, Part II, State Data, Public Assistance Report No. 48, U.S. Department of Health, Education, and Welfare, Social Security Administration, June 1962.

^{3/} Where different cost figures are included for boys or girls, it is recommended that the higher figure be used.

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Special Needs

The Federal Handbook of Public Assistance Administration provides that a State plan may contain the description of the specified circumstances affecting the need of the individual. These the State agency will recognize by including consumption items, in addition to the basics, for all individuals in those circumstances. If the State provides for modifications of the basic items, the circumstances requiring these modifications must be justifiably different from those recognized as necessary to all individuals.

This principle of "special needs" was intended to provide a more individualized approach in the development of cost standards. This method of individualization requires judgment on the part of the worker and knowledge on the part of the client as to the agency's policies.

The practical problem in the effective use of the special need items is the lack of equity that results because of the variations among workers in knowledge, attitudes, and even available time, together with the variations among recipients in knowledge of what they can ask for. The net effect is that in some States certain recipients' needs are fairly substantially met, whereas others may receive only the minimum amounts.

Perhaps a more equitable, liberal (for total caseload), and simple method is to have realistic money amounts in the standards of requirements for basic needs without the individualization of special needs. A differentiation can be made for different living arrangements, such as variations in costs for room and board, restaurant meals, or nursing home care.

If the State uses items of special need, it is recommended that the cost figures be presented in a table. Such a table will be easier to use than the same information presented in text form.

Program Instruction APA-PI-74-17, HEW 1974,
re: Consolidated Public Assistance Standards,
Defendant Berger's Exhibit 2

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE
SOCIAL AND REHABILITATION SERVICE
WASHINGTON, D.C. 20201

PROGRAM INSTRUCTION
APA-PI-74-17
June 10, 1974

TO: STATE AGENCIES ADMINISTERING APPROVED PUBLIC
ASSISTANCE PLANS

SUBJECT: Consolidated Standards - Cost Differentials

CONTENT: 45 CFR 233.20(a)(2) provides that a State plan
for OAA, AFDC, AB, APTD, or AABD must "specify
a statewide standard, expressed in money
amounts, to be used in determining the need
of applicants and recipients and the amount of
the assistance payment."

Federal policy further provides that by July 1,
1969, the State's standard of assistance for
the AFDC program must have been adjusted to
reflect fully changes in living costs since
such standards were established and any
maximums imposed by the State on the amount
of aid paid to families must have been pro-
portionately adjusted.

In such adjustment, a consolidation of the
standard (i.e., combining items) may not
result in a reduction of the content of the
standard. Furthermore, the State must provide
that the standard will be uniformly applied
throughout the State.

The provisions in section 402(a)(1) of the
Social Security Act provide the basis for
the requirement of a single statewide standard
of assistance. However, area differentials
are permissible when there is objective,
verifiable evidence that the differences are
appreciable and based on actual differences in
costs.

The Supreme Court in Wyman v. Boddie, 402 U.S.
991 (1971), affirmed without opinion; 434 F. 2d
1207 (1970), upheld the Department of Health,
Education, and Welfare position that objective
justification must be provided for such
differentials. The principle has been further
enunciated in several lower court cases.

HEW Program Instruction re: Consolidated
Public Assistance Standards

In Rothstein v. Wyman, 398 U.S. 275 (1970), affirmed on other grounds; 303 F. Supp. 339 (1969), as well as in Boddie, the decisions emphasized that there must be objective, verifiable evidence that the differentials

[2] are based on actual differences in costs. In Rothstein, the Court found no evidence justifying any disparity in the levels of schedules between New York City and the surrounding counties.

In Boddie, the Court noted that, with the exception of shelter and to a lesser degree utilities, variable cost differences between recipients similarly situated have not been shown to exist in New York State. With regard to cost studies conducted in May 1968 by the State, the Court stated:

"that the only variation in costs between these areas was due to slight differences in utility rates. Every study undertaken by the Department since then has confirmed the initial conclusion that, with respect to the items covered by the basic grant, that is, food, clothing and personal care, home furnishings, household operations, transportation, education, and miscellaneous items, there are no objectively verifiable differences in cost."

To determine whether there are appreciable differences, the actual costs as determined by objective data must be sufficiently different when compared with the State's standard to meet the Court's test of "appreciable." If there are to be differentials, States are encouraged to limit such justifiable differentials to two or three.

Unless "appreciable" cost differences can be shown by objective data to exist, States

HEW Program Instruction re: Consolidated
Public Assistance Standards

utilizing non-uniform standards violate section 402(a)(1) of the Social Security Act and 45 CFR 233.20(a)(2) which require a single state-wide standard of assistance.

INQUITIES

TO:

SRS Regional Commissioners

Commissioner
Assistant Payments Administration

**GUIDELINES FOR DEVELOPMENT
OF
CONSOLIDATED AFDC ASSISTANCE
STANDARDS**

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL AND REHABILITATION SERVICE
ASSISTANCE PAYMENTS ADMINISTRATION
SEPTEMBER 1974

HEW Guidelines for Consolidated AFDC Assistance Standards

PREFACE

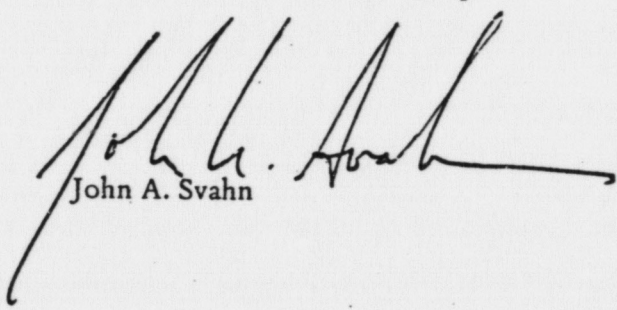
This manual is intended to be used by State welfare agencies to familiarize and assist them in development of consolidated standards of assistance for the Aid to Families with Dependent Children (AFDC) Program. In a step-by-step approach, the fundamentals of project management are emphasized. Explanation of the objectives of each chapter precedes suggested tasks and discussion of the work they involve. Additionally, each chapter details documentation requirements to facilitate HEW regional office review of proposed consolidation plans.

While this manual provides an approach with various options to consolidation of standards of assistance, it is not intended to be used as a definitive guide. The purpose of its publication is to provide State Administrators a description of the process of consolidation.

The approaches contained herein are not the only methods that can be used, but they have been used effectively by several States.

It is hoped that this document will provide the reader with an insight to the process and procedures of consolidation and will assist States in adopting this equitable method of distribution of scarce resources to those who are most in need.

I would like to take this opportunity to express my appreciation for the contribution made by the late Richard M. Gertzof of American Data Systems, Inc. Without his initiative and long hours of work, this document would not have been prepared.



John A. Svahn

HEW Guidelines for Consolidated AFDC
Assistance Standards

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HEW Guidelines for Consolidated AFDC
Assistance Standards

INTRODUCTION

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A. Consolidated Standard Defined

A consolidated standard of assistance is a re-definition of a State's AFDC standards from individual items or groups of items to a single standard which is expressed in a dollar amount per recipient or per recipient family. This redefinition is accomplished by averaging payments for the individual items using a statistically fair method and combining these averages into a consolidated standard.

Specifically, the averaging and consolidation process may promote:

- (1) Elimination of one or several special needs in the agency standard through incorporation into a consolidation figure;
- (2) Redefinition of a shelter standard and its qualifications into a flat amount per recipient or recipient family by "averaging away" the differences caused by such situations as subsidization by public housing, provision of free housing, or prorating of shelter costs between recipients and non-recipients in a household;
- (3) Redefinition of specific differentials such as geographic location, ages and sex of children, or other individual factors, into flat amounts on a per recipient or a recipient family basis.

A properly executed consolidation based on fair averaging principles will reasonably represent the state-wide application of needs determination as were formerly decided by assistance payments workers on an individual basis. Furthermore, fair averaging will assure recipients an equitable distribution of funds budgeted for all items in the State's standards of assistance.

B. Rationale for a Consolidated Standard

Many States have discovered that there are considerable difficulties in administering an AFDC public assistance program based on a determination of individual needs. Problems encountered include:

HEW Guidelines for Consolidated AFDC
Assistance Standards

[i-1]

- (1) A complicated standards structure which attempts to explicitly relate, the amounts of the payments to the individual circumstances of the recipient;
- (2) The inadequacy of the standards structure;
- (3) The greater chance of error in calculating detailed budget computation and in misinterpreting State policies which result in higher error rates;
- (4) Additional paperwork and staff time administering a more complex budget system;
- (5) Inequities in amounts of assistance among families in similar socioeconomic situations.

[i-2] Conversion to a consolidated standard controls many of these difficulties:

- (1) All recipients in similar situations are eligible for the same level of financial need and are treated on an equitable basis.
- (2) The consolidated standard of assistance is amenable to updating as costs of living change, permitting a State to adjust recipients' grants on a more timely basis.
- (3) The variations by case technicians in interpreting and applying policy are reduced.
- (4) Consolidated standards are adaptable to computer calculation of grants which speeds up grant delivery and reduces administrative error.
- (5) The error ratio of overpayments and underpayments due to incorrect budgeting of basic and special needs generally declines for those standards consolidated.

C. Legal Authority and Background

The enactment of Section 402(a)(23) of the Social Security Act in 1967 is a milestone, in that prior to its passage, States were traditionally at liberty to decide the levels of standards of needs and payment for public assistance. This is illustrated by the vast differences in the types and levels of standards in existence. Some States include items in their basic required standards that other States do not recognize at all. A few States pay 100% of need; others impose dollar maximums to an individual or family; still others scale payments by ratable reductions of a fixed percentage of the need standard.

Section 402(a)(23) reads as follows:

"(The States shall) provide that by July 1, 1969, the amounts used by the State to determine needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted."

Federal regulations in support of Section 402(a)(23) incorporated HEW interpretation and imposed certain requirements on State AFDC plans. Among the most important tenets of 45 CFR 233.20(a) are that the States:

"Provide that the determination of need and the amount of assistance for all applicants and recipients will be made on an objective and equitable basis and all types of incomes will be taken into consideration in the same way except where otherwise specifically authorized by Federal statute.

HEW Guidelines for Consolidated AFDC
Assistance Standards

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"Specify a statewide standard, expressed in money amounts, to be used in determining (a) the need of applicants and recipients and (b) the amount of the assistance payments.

"(The State Plan must) provide that by July 1, 1969, the State's standard of assistance for the AFDC program will have been adjusted to reflect fully [i-3] changes in living costs since such standards were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted. In such adjustment a consolidation of the standard (i.e., combining of items) may not result in a reduction in the content of the standard. In the event the State is not able to meet need in full under the adjusted standard, the State may make ratable reductions in accordance with subparagraph (3)(viii) of this paragraph (if full payments are precluded by maximums or insufficient funds, adjustments will be made by methods applied uniformly statewide). Nevertheless, if a State maintains a system of dollar maximums, these maximums must be proportionately adjusted in relation to the updated standards."

"Provide that the standard will be uniformly applied throughout the State."

"If the State agency includes special need items in its standard, (a) describe those that will be recognized, and the circumstances under which they will be included, and (b) provide that they will be considered in the need determination for all applicants and recipients requiring them."

It was not until the United States Supreme Court decided Rosado vs. Wyman in April, 1970 that the provisions of 402(a)(23) were tested and explicitly interpreted. In Rosado the Supreme Court ascribed two broad purposes to Section 402(a)(23), the first being that States "face up realistically to the magnitude of the public assistance requirement and lay bare the extent to which their program fell short of fulfilling actual need"; and the second, that they "apportion their payments on a more equitable basis."

HEW Guidelines for Consolidated AFDC
Assistance Standards

[i-3]

The Court recognized that Section 402(a)(23) would still allow a State, "after recomputing its standard of need, (to) pare down payments to accommodate budgetary realities by reducing the percent of benefits paid or switching to a percent reduction system, but it may not obscure the actual standard of need."

The decision further reiterated that the Congressional intent was not for Section 402(a)(23) to be a meaningless exercise, and that States could not redefine their standards of assistance to circumvent the requirements of re-evaluating their existing standards. This precluded a State from reviewing its standards and then applying an update and percentage reduction in such a way that both the standards and payments made remained unchanged.

The Court concluded that Section 402(a)(23) invalidated "any program that substantially alters the content of the standard of need in such a way that it is less than it was prior to the enactment of 402(a)(23), unless a State can demonstrate that the items formerly included no longer constituted part of the reality of existence for the majority of welfare recipients. (The Court did not) hold that (States) may not, consistently with the Federal statutes, consolidate items on the basis of statistical averages. Obviously, such averaging may affect some families adversely and benefit others. Moreover, it is conceivable that the net payout, assuming no change in the level of benefits, may be somewhat less under a streamlined program. Providing all factors in the old equation are accounted for and fairly valued and providing the consolidation on a statistical basis reflects a fair averaging, a State may, of course, consistently with 402(a)(23) redefine its method for determining need. A State may, moreover, as (the Court) noted, accommodate any increase in its standard by reason of 'cost-of-living' factors to its budget by reducing its level of benefits."

Based on the Supreme Court's interpretation of 402(a)(23), procedures are clearly defined for establishing reasonable AFDC standards within the States. Furthermore, it

HEW Guidelines for Consolidated AFDC Assistance Standards

establishes a basis for guidelines for redefinition and consolidated standards of assistance. In general terms, any consolidation of AFDC standards must provide accountability for each consolidated item with confirmation that it has been averaged appropriately.

Some of the specific requirements and criteria of a consolidation plan are the following:

- (1) Consolidation must be based on standards of assistance that have been updated by July 1, 1969;
- (2) Consolidation must not result in overall reduction in the content of the existing standard;
- (3) The new standard must be applied equally and objectively to applicants and recipients alike;
- (4) A consolidated standard must be a statewide standard; and, therefore,
- (5) It must be uniformly applied throughout the State.

D. This Manual's Approach to Consolidation of AFDC Standards of Assistance

The purpose of this manual is to meet the objectives of developing a consolidated standard of assistance based upon this legal framework.

The following steps outline the general development and implementation:

- (1) Review the State standards of assistance, including policy manuals, State plan material, and applicable Federal laws and regulations;
- (2) Understand the method of initiating and authorizing of grant payments;
- (3) Identify each component of the State assistance standard and payments made, noting the history and evolution of standards;
- (4) Review and evaluate the State procedures for updating standards in accordance with Section 402(a)(23), and update those standards of assistance as required;
- (5) Obtain HEW approval of proposed updating methodology;
- (6) Determine which items are to be incorporated into the consolidated standard, those which are to be paid outside of the consolidated standard, and those which may legally be deleted from policy;
- (7) Design a statistical approach for surveying case records as a basis for developing fair averages;
- (8) Survey the necessary cases, updating standards where required;
- (9) Tabulate the results and determine their statistical validity;
- (10) For those standards to be updated on a percentage basis after surveying, apply percentage averages to arrive at updated consolidated standards for each recipient or recipient family;

HEW Guidelines for Consolidated AFDC Assistance Standards

- (11) Prepare analytical and financial reports reviewing the potential effect on recipients' budgets and on agency finances under alternative situations;
- (12) Prepare required administrative changes including development of policy and plan material, informational material, procedures, and forms;
- (13) Obtain HEW approval of plan material;
- (14) Implement the consolidated standards of assistance.

This manual is intended to guide the State agency in designing a consolidated standard of assistance that will meet the legal requirements and be responsive to its recipients' needs as well as its own.

E. Format

All definable phases are examined in depth. Each chapter is a separate entity which explores the subject and may serve as a guide for the necessary tasks.

Generally, each chapter is divided into four or more basic sections. The first states the objectives and their significance. The second section suggests the tasks for meeting the given objectives. This list of task descriptions comprises the work program for the chapter. Because the manual is intended for use by different States, the work program may, on occasion, appear somewhat broad in scope. Therefore, the State should examine it with regard to its own unique situation.

Section three supplements the work program with particular elaboration on major tasks and suggested approaches. Section four of each chapter is included as a discussion of documentation requirements of each work program step. This section describes the format and content of completed work which may be requested for review by the HEW regional office.

Additional sections of the manual are included as appropriate to describe special situations or to clarify the segments of the chapter.

Opinion of the District Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
MARION AITCHISON, et al., :

Plaintiffs, :

-against- :

STEPHEN BERGER, et al., :

Defendants. :

75 Civ. 1224

OPINION

----- x
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S.D. N.Y.
U.S. DISTRICT COURT
W.C.

Opinion

FRANKEL, D.J.

Ten years ago, Congress enacted Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396g, the so-called "Medicaid" legislation. Medicaid is a cooperative federal-state medical assistance program operated under state direction, subject to extensive federal statutory and regulatory guidelines. States are not required to participate in Medicaid, nor, if they do participate, to extend benefits to any persons other than those receiving federally-funded public assistance - sometimes referred to by responsible officials (and hereinafter) as "categorical assistance."¹ If, however, a State decides to participate in Medicaid, it must submit a plan that comports with federal law. If the plan includes aid for people not receiving categorical assistance but qualifying as "medically needy,"² the State must observe the additional federal requirements applicable to this group of recipients.³

New York has elected to participate in the Medicaid Program and to extend benefits to the medically needy.⁴ The basic issues now before the court are whether New York's statutory and regulatory scheme setting income eligibility and

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retention levels for the medically needy⁵ are compatible with applicable federal regulations,⁶ and, if not, whether these federal regulations are themselves inconsistent with the Social Security Act.⁷

The plaintiffs are the wife and child of a disabled 54-year-old man who has been in a nursing home since 1972 and receiving medical assistance since October 17, 1974. As a medically needy "family" of two,⁸ plaintiffs, under New York's medical assistance law, are allowed to retain a total of \$317 per month for their personal maintenance expenses. The monthly standard of need for a family of two receiving categorical assistance, living in the same county and paying the same rent as plaintiffs, is \$370 per month. Thus, plaintiffs are allowed to retain \$53 less a month for their maintenance than the comparable public assistance standard of need for a family of two.

The discrepancy results from a difference in computing shelter allowances. For ADC recipients, these allowances are based upon actual rents paid. For the medically needy family, the allowance has nothing to do with the family's actual rent. It is instead based on a figure computed from statewide averages, which may be above or below actual rent. For the class of plaintiffs before us it is, of course, below.

Opinion

To spell out these arrangements, which are not evident from the face of the State's Medicaid statute and regulations:

No. _____ Under the ADC provisions, each family of the same size receives a basic allowance of the same amount, plus an allowance for shelter based upon actual rent paid up to the maximum set for shelter in a given family's social service district (county). For example, a family of two eligible for ADC receives a basic monthly allowance of \$150; if the family lives in Rockland County and pays \$250 a month rent, as plaintiffs do, it is entitled to a monthly shelter allowance of \$220, the maximum allowed in Rockland County. Thus, the total monthly public assistance standard of need for a family comparable to plaintiffs' in size, county of residence, and shelter costs, is \$370.⁹

To arrive at the medical assistance income levels, defendants average the shelter allowances paid to all ADC families of a given size and divide by the number of those families. The resulting "mean shelter allowance" is then added to the basic allowance to determine the income allowance for a family of that size.¹⁰ Thus, some medically needy families are entitled to retain more, others

Opinion

less maintenance income than they would be paid if they were without any income and paid cash benefits under ADC. The crucial variable is shelter cost, more specifically, whether a given family's shelter costs exceed the shelter average.

Plaintiffs contend that this differential violates federal regulations. They seek to represent a class consisting of all persons in New York receiving medical assistance who are allowed to retain income for maintenance in an amount less than the applicable standard of need under New York's public assistance programs.¹¹

Seeking declaratory and injunctive relief, plaintiffs assert rights under 42 U.S.C. § 1983, the Social Security Act, regulations promulgated thereunder, and the supremacy and equal protection clauses of the Constitution. They invoke the court's jurisdiction under 28 U.S.C. §§1331(a), and 1343(3) and (4). They seek to maintain the suit as a class action under Fed. R. Civ. P. 23(b)(2). Plaintiffs have moved upon affidavits and a series of stipulations subsequently submitted for (1) a declaration that this is a proper class action and (2) summary judgment on their claim that the maintenance income levels of section 366(2)(a)(8) of the New York Social Services Law and accompanying regulations,¹² as applied to the plaintiff class,

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violate 45 C.F.R. §248.3(c). Defendants cross-move to dismiss the complaint for lack of jurisdiction. There do not appear to be any material issues of fact. For the reasons stated below, both of plaintiffs' motions are granted.

Jurisdiction

Jurisdiction in welfare cases is a recurrent issue, regularly resolved for plaintiffs.¹³ Since the court concludes that plaintiffs' equal protection claim is not "wholly insubstantial" or "obviously frivolous," as those phrases have been construed by the Supreme Court,¹⁴ jurisdiction exists under 28 U.S.C. §1333(3) and there is no need to explore in detail the alternative jurisdictional bases asserted by plaintiffs. See Schaak v. Schmidt, 344 F. Supp. 99, 102-03 (E.D. Wisc. 1971). Suffice it to say that jurisdiction may also exist under 28 U.S.C. §1331(a),¹⁵ but apparently not under the other asserted provisions.¹⁶ This court can pass upon plaintiffs' "statutory" claims without deciding whether a three-judge court should be convened to decide the merits of plaintiffs' equal protection claim.¹⁷

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Class Action Motion

The question of class action treatment can also be dealt with summarily. Plaintiffs seek to represent all medically needy persons in New York who are required by defendants, pursuant to state statute and regulations, to live on a monthly income allowance which is below the level of need for categorial assistance families of the same size, living in the same county, and paying the same rent. This is a classic case for treatment as a class action under ^{Fed.} R.Civ. P. 23(b)(2). See, e.g., Almenares v. Wyman, 334 F. Supp. 512, 518-19 (S.D.N.Y. 1971), modified 453 F. 2d 1075 (2d Cir. 1972); Wilczynski v. Harder, 323 F. Supp. 509, 512 n.3 (D. Conn. 1971); Schaak v. Schmidt, supra at 104. Defendants' argument that plaintiffs have failed to identify sufficiently the members of the class might carry some weight if this were a (b)(3) class action where notice had to be given to class members. But it seems clear that there is no such requirement here. ^{See} Frost v. Weinberger, 515 F.2d 57, 65 (2d Cir. 1975).

Inconsistency Between State and Federal Law

While the issue is a difficult one, the court has concluded that the income levels in New York's medical assistance statute and regulations do not conform with the requirements of 45 C.F.R. § 248.3(c).

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45 C.F.R. § 248.3(c)(1) requires that a state plan covering the medically needy "[p]rovide levels of income * * * for maintenance, in total dollar amounts, as a basis for establishing financial eligibility for medical assistance." The income levels referred to "must be, as a minimum, at the higher of the levels of the payment standards generally used as a measure of financial eligibility in the money payment [categorical assistance] programs * * *." 45 C. F. R. §248.3(c)(1)(ii). For families of three or more, the income level is to be at the level of the payment standard under a State's ADC program "generally applied." For individuals and families of two, the income level is to be at the ADC payment standard "generally applied" or at the level of payments "generally available" under the SSI program, whichever is higher. Finally, the income of the medically needy must be applied "[f]irst, for maintenance, so that any income in an amount at or below the established level will be protected for maintenance" before any income may be applied to defray the costs of medical assistance. 45 C.F.R. §248.3(c)(2),¹⁸

The corresponding state law is found in NYSSL §366(2)(a)(8)¹⁹ and N.Y.C.R.R. §§ 360.5(e)²⁰ and 360.7(a)(5).²¹ These provisions set forth levels of income, in total dollar amounts, which serve both as a basis for establishing

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eligibility for medical assistance and as the level of income that may be retained for personal maintenance expenses by eligible medical assistance recipients.²²

Thus, New York law complies with the introductory sentence of 45 C.F.R. §248.3(c)(1) by specifying "levels of income * * * for maintenance, in total dollar amounts, as a basis for establishing financial eligibility for medical assistance." The problems begin in subsequent subdivisions of the federal rule.

Subdivision (ii) of 45 C.F.R. §248.3(c)(1) requires that the levels of income set be, "as a minimum, at the higher levels of the payment standards generally used as a measure of financial eligibility in the money payment programs [i.e., the ADC standard generally applied]."²³ It is undisputed, or in any event obvious, that plaintiffs and an undetermined number of other medical assistance recipients are allowed to retain less income for maintenance than they would receive for maintenance if they were categorically needy (i.e., eligible for ADC assistance). Plaintiffs contend that this difference in level of maintenance income violates the requirement of § 248.3(c)(1)(ii) that maintenance income be set, as a minimum, at the level of the applicable ADC payment standard. Defendants counter that §248.3(c)(1)(ii) requires that the income levels be

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set at or above the ADC "payment standard generally applied" and that there is no such standard in New York's ADC assistance scheme other than that found in NYSSL §366(2)(a)(8) and its accompanying regulations.

Under New York's ADC program, need is determined and benefits paid on a partially variable rather than totally flat grant basis. That is, for each family size, the standard of need, and identical payment standard,²⁴ consists of (1) a basic allowance in an amount equal for all families of a given size and (2) an allowance for shelter that varies from county to county and from family to family depending on the actual shelter costs incurred and the established county maximum.²⁵ Hence, defendants argue that there is no ADC payment standard "generally applied" and that the actual ADC payment "standard" could not possibly be used as the medical assistance eligibility standard because it is not expressed in "total or flat dollar amounts."

The argument is thin as semantics and no more robust as a matter of legal reasoning. It is not correct in any relevant sense to say that New York lacks any ADC payment standard "generally applied" and that the "total dollar amounts" language of

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45 C.F.R. § 248.3(c)(1) necessarily requires that the medical assistance standard be expressed in flat dollar amounts.

The composite need formula of NYSSL § 131-a is New York's ADC payment standard.²⁶ That the application of this standard to families of the same size results in different amounts of need and corresponding grants does not vitiate it as a standard "generally applied." The legal world is filled with generally applicable standards that produce varying individual results because of varying individual circumstances responding to the material (and general) criteria.

Defendants' reading of "total dollar amounts" to preclude the use of the ADC methodology as the medical assistance standard is, similarly, a dry, scarcely inevitable, unpersuasive construction. It is true, as defendants say, that the "total dollar amounts" language of 45 C.F.R. §248.3(c)(1) was adopted to implement the "reasonable standards" language of 42 U.S.C. § 1396a(a)(17)²⁷ and that this statutory provision was meant to ensure that the states adopted efficient methods of determining eligibility for medical assistance.²⁸ It is also true that NYSSL § 366(2)(a)(8), as would be true of any standard set in flat dollar amounts, is an efficient method of

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determining eligibility. But it does not follow at all from these two flawless premises that no variable standard can satisfy the "total dollar amounts" requirement because such a standard is not expressed in flat dollar amounts.

The "total dollar amounts" language, fairly read in light of its purpose, merely calls for an obj[ective], efficient standard for determining eligibility.²⁹ Such a standard could either be expressed in flat dollar amounts, as in NYSSL § 366(2)(a)(8), or be readily reducible to flat dollar amounts³⁰ as is the actual ADC standard in NYSSL § 131-a. Indeed, New York apparently agreed with this broader reading when it read very similar language in the ADC eligibility regulation³¹ to allow it to adopt the variable standard now found in NYSSL § 131-a.

In spite of the existence of an actual ADC standard, defendants claim that NYSSL §366(2)(a)(8) represents New York's only "ADC payment standard generally applied." This disputed provision was created for the purpose of setting income allowances for the medically needy. As described above, the figures in that provision were arrived at by (1) allegedly³² averaging the shelter allowances paid to all families of a given size receiving categorical assistance and (2) adding that average to the appropriate basic allowance.

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This ad hoc "ADC payment standard" does not mesh acceptably with 45 C.F.R. § 248.3(c)(1). To determine whether a State's medical assistance standard is high enough, the federal regulation requires that it be compared with the "generally used" public assistance eligibility standard. Defendants' synthetic ADC standard, used to determine eligibility for medical rather than categorical assistance, cannot be compared with itself to test its own adequacy. When matched with the proper (i.e., actual) ADC standard, the artificial ADC standard, as the embodiment of the medical assistance eligibility standard, is sometimes adequate, sometimes not, as in the case of the class members before us. Despite the obvious incompatibility of their artificial standard with the requirements of the federal regulation, defendants insist that the "generally used" language sanctions their averaging methodology.

There is no sound basis for defendants' textual argument that the "generally used" language of 45 C.F.R. § 248.3(c)(1)(ii) means or can mean a hypothetical "average" ADC payment standard. ³³ As a matter of English, defendants' reading is hard to accept. New York's "average ADC standard" is never used, let alone generally used, as the ADC payment standard. That standard is found in NYSSL § 131-a.

The fairer use of the federal phrase would seem to be, as plaintiffs suggest, to contrast the general ADC standard with occasional departures from that standard made to take care of special needs³⁴ and/or to take cognizance of the fact that some individuals were "grandfathered" into the SSI program even though they did not meet the generally used standard of SSI eligibility.³⁵

In further support of their textual argument, defendants find significance in a change in the language from a predecessor regulation that required medical assistance eligibility standards to be set "at the levels of the most liberal money payment standard used by the State * * *." 45 C.F.R. §248.21(a)(3)(i)(B). It seems plain, however, that the change in language was not intended to effect any substantive change, but was made merely to reflect the amalgamation of Titles I, X, XIV, and XVI of the Social Security Act into a new Title XVI (the SSI program). Thus, it no longer made sense to talk about the most liberal money payment standard when there were only two such standards remaining, ADC and SSI. Hence, the language was changed to "the higher of * * *." In Puerto Rico, Guam, and the Virgin Islands, where SSI did not go into effect,³⁶ the "most liberal" language was retained.

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Defendants' next argue that HEW's approval of New York's medical assistance plan demonstrates its validity. While HEW approval is some evidence of validity, it is not controlling.³⁷ It is not more than slightly persuasive when, as here, the so-called approval does not appear to have followed explicit attention to the question now confronted. All that appears on the face of New York's medical assistance plan and NYSSL § 366(2)(a)(8) are income amounts with no indication of how these figures were arrived at or whether they are at, below, or above the ADC payment standard. The "averaging" technique is only discovered after specific exploration. Furthermore, HEW has recently notified New York, in a quarterly compliance report, that its cash assistance payment standards are impermissibly higher than its medical assistance standards. This casts doubt upon the latter standards, if not upon the underlying averaging methodology as such.³⁸

This court concludes, as have other courts in closely analogous cases, that the State standard of care for its medically needy is in conflict with the governing federal regulations. See Dominguez v. Milliken, CCH Medicare and Medicaid Guide ¶26,633 (W.D. Mich. 1973); Schank v. Schmidt, supra; Schlemowitz v. Lavine, 75 Misc.2d 529 (Sup. Ct. Nassau Co. 1973).

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Unless those regulations are themselves invalid, plaintiffs must prevail.

Validity of 45 C.F.R. §248.3(c)

Defendants argue that if plaintiffs' interpretation of 45 C.F.R. §248.3(c) is adopted, as it now has been, then the regulation is inconsistent with, and thus invalid under, 42 U.S.C. §1396a(a)(17). For the reasons stated below, the court has concluded that the regulation is valid.

45 C.F.R. §248.3(c) was apparently derived from 42 U.S.C. §1396a(a)(17),³⁹ which requires state plans to "include reasonable standards * * * for determining eligibility for and the extent of medical assistance. * * * " Pertinent legislative history and administrative interpretation indicate that the "reasonable standards" language encompasses at least two concepts: (1) regulatory simplicity⁴⁰ and (2) income levels set at or above the subsistence level under public assistance programs.⁴¹ By requiring eligibility standards to be in "total dollar amounts" and at the level of the higher payment standard used in a State's money payment programs, 45 C.F.R. §248.3(c) embodies both of these aims.

Defendants argue that 42 U.S.C. §1396a(a)(17) allows the states to formulate their own eligibility standards so long as they are "reasonable." Since

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New York's averaging methodology and resulting eligibility standards are said to constitute "reasonable standards," defendants urge the court to uphold the state statutory and regulatory scheme notwithstanding any contrary mandate in 45 C.F.R. §248.3(c). Assuming arguendo that New York's eligibility standards are reasonable, that fact is irrelevant. The relevant inquiry is whether the federal regulation itself is a reasonable interpretation of 42 U.S.C. §1396a(a)(17). See, e.g., Edelman v. Jordan, 415 U.S. 651, 660 n.8 (1974). This court, like others before it, concludes that it is. See Dominguez v. Milliken, supra at 9121 (upholding 45 C.F.R. §248.21); Schaak v. Schmidt, supra at 103-04 (upholding 45 C.F.R. §248-21).

Even if this were a contest as to which is more reasonable, the federal regulation would prevail. The programs in question are for real people with real needs, not statistical averages. Construing the legal documents liberally in favor of the needy,⁴² it makes eminent sense to read the standards in terms of every individual or family, not to hold that it is sufficient if some average is accomplished.

To discriminate against the self-supporting by requiring them to live on income below the level

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declared by New York to be necessary for minimal maintenance would do violence to the aims of the Medicaid legislation and common sense. Our concern here is with people who have not sought public assistance for routine support, but only to meet the catastrophe of serious illness. The court could not countenance for an instant the mean-spirited fiction that people driven to seek public assistance are somehow unworthy or undeserving. Nevertheless, it remains deep and familiar in our esteem for individual initiative that we would not deem it acceptable without some particular justification to treat those outside categorical assistance groups less generously than those within.⁴³ The questioned regulation, fairly read, reflects this philosophy. No good reason appears either for reading it differently or holding it invalid.

It may be noted, finally, that today's decision, on defendants' own analysis, does not entail any inevitable increase in the State's Medicaid outlays. Those who pay less than average shelter allowances for rent have in a sense been receiving windfalls. Nobody supposes these extra benefits are compelled as a matter of federal law or regulation. This court holds only that those disadvantaged by the Procrustean average are entitled individually to the concrete

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benefits of the federally mandated standards.

Having concluded that NYSSL §366(2)(a)(8) and N.Y.C.R.R. §§ 360.5 and 360.7 are incompatible with 45 C.F.R. §248.3(c) and that the federal regulation is valid, the court (1) declares the state statute and regulations invalid as applied to class members, (2) will enjoin defendants from enforcing these provisions against class members, and (3) will order defendants to compute the entitlements of class members on the basis hereinabove outlined, namely, to protect for maintenance amounts no less than those allowed to comparable ADC recipients.

Settle a final decree on notice.

Dated, New York, New York

November 12, 1975

Martin E. Finkel
U.S.D.J.

Opinion

FOOTNOTES:

1. 42 U.S.C. § 1396a(a)(10)(A)(1970). The federally-funded public assistance programs now in effect are the Aid to Families with Dependent Children Program ("ADC") and the Supplemental Security Income Program ("SSI") for the aged, blind, and disabled.
2. "An individual is considered to be medically needy if he has income and resources which exceed the amount of income and resources allowed to the categorically needy but which are insufficient to meet the costs of necessary medical and remedial care and services."
45 C.F.R. §248.1(a)(2).
3. See 42 U.S.C. § 1396a(a)(10)(C).
4. New York Social Services Law ("NYSSL") §§363-a, 366 (McKinney Supp. 1974-75).
5. NYSSL § 366(2)(a)(8); New York Codes, Rules and Regulations ("NYCRR") §§360.5 and 360.7.
6. Primarily, 45 C.F.R. § 248.3(c)(1) and (2) (1974).
7. Primarily, 42 U.S.C. § 1396a(a)(17).
8. The parties have stipulated that when this action began, plaintiffs were a family of three, but are now a family of two. For purposes of determining family size for income maintenance and eligibility purposes, a family member in chronic care "shall not be deemed to be a member of any household." NYCRR § 360.5(e).
9. See NYSSL § 131-a(2) and (3); NYCRR § 352.2(e); 1975 Table of Local Agency Maximum Shelter Allowances with Heat, Exhibit A of Affidavit of Eleanor A. Sochocki, sworn to October 3, 1975.
10. Since the resulting figure for individuals and families of two is even lower than the SSI payment standard for individuals and two-person families, the SSI standard is used as the income retention level for these medically needy people. Federal law requires a State to set its income maintenance levels,

Footnote 10 cont'd

for individuals and families of two, at the higher of the SSI and ADC payment standards. 45 C.F.R. § 248.3(c)(1)(ii)(B). See note 23 infra.

11. The two relevant state public assistance programs are contained in NYSSL §§345 through 358-c ("ADC") and §§ 207-212 ("SSI").
12. .. NYCRR §§ 360.5(e) and 360.7(a)(5).
13. But cf. Andrews v. Maher, Docket No. 75-7029 (2d Cir. October 24, 1975).
14. See, e.g., Hagans v. Lavine, 415 U.S. 528, 536-43 (1974); Edelman v. Jordan, 415 U.S. 651, 653 n.1 (1974) (processing the claims of some applicants for welfare aid before those of similarly situated plaintiffs raises a not "wholly insubstantial" equal protection claim).
15. The parties have stipulated that defendants administer a medical assistance fund of some \$3,000,000,000 and that if plaintiffs are successful in this action, the financial impact on the state medical assistance budget will be in excess of \$10,000. Thus, plaintiffs' claims arguably satisfy the \$10,000 jurisdictional amount requirement of 28 U.S.C. § 1331(a). See, e.g., Bass v. Rockefeller, 331 F. Supp. 945 (S.D.N.Y.), appeal dismissed as moot, 464 F.2d 1300 (2d Cir. 1971); Yanez v. Jones, 361 F. Supp. 701, 706 (D. Utah 1973); Moore v. Betit, 511 F.2d 1004, 1007 n.12 (2d Cir. 1975). See also Committee for GI Rights v. Callaway, 518 F.2d 466, 472-73 (D.C. Cir- 1975).
 Plaintiffs may also satisfy the monetary requirement when it is viewed from the standpoint of future medical assistance payments. Cf. Moore v. Betit, supra at 1006.
16. Although the Supreme Court has left open the issues of whether all supremacy clause and § 1983 claims are cognizable under 28 U.S.C. §§ 1343(3) and/or (4), the Second Circuit has, at least temporarily, resolved those same issues against jurisdiction. See Andrews v. Maher, supra.

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17. See, e.g., Hagans v. Lavine, supra at 543-45; Cordova v. Reed, Docket No. 75-7120 at 5469 (2d Cir. August 7, 1975).

Plaintiffs stated at oral argument that they would move to convene a three-judge court if the motion for summary judgment on their "statutory" claim is denied.

18. While the crux of plaintiffs' attack is on subdivision (1) of § 248.3(c), subdivision (2) is, in all strictness, more directly relevant since its concern is how much of a medically needy family's income can be "taken" to defray the costs of medical assistance. Subdivision (1) concerns itself with levels of income for eligibility purposes. None of the members of the class are complaining that they are ineligible for medical assistance because of unlawful income levels. Thus, subdivision (1) is only derivatively relevant to plaintiffs' case; that is, to construe "established level" in subdivision (2) requires interpreting subdivision (1) to see if the established level comports with the minimum requirements there.

19. "The following income * * * shall be exempt and shall neither be taken into consideration nor required to be applied toward the payment or part payment of the cost of medical care and services * * * . (8) income in an amount set forth in the following schedule:

"Annual net income--Number of family members in a household and family members for whom they are legally responsible or have assumed responsibility

One	Two	Three	Four	Five	Six	Seven
\$2,500	\$3,400	\$4,000	\$5,000	\$5,700	\$6,400	\$7,200
[\$2,700]	[\$3,800]	[\$4,200]	[\$5,000]	[\$5,800]	[\$6,500]	[\$7,400]

"Such income exemptions shall be increased by six [seven] hundred dollars for each member of a family household in excess of seven."

Figures in brackets show the amount of exempt income as of October 1, 1975, to reflect recent amendments of § 366(2)(a)(8).

Opinion

20. The same income allowances specified in NYSSL § 366(2)(a)(8) appear in this regulation, which dictates how much of the "excess income" of a person in a medical institution can be "given" to his family for maintenance expenses. This is the relevant section when the medically needy family's income falls short of the allowance level and the hospitalized member of the family has income to contribute to the family.
21. Again, the same income allowances appear in this regulation as those specified in NYSSL § 366(2)(a)(8). This regulation, rather than §360.5, applies when the spouse of a hospitalized person has income in excess of the income allowance level. Any income in excess of the appropriate level is to be contributed to the medical expenses of the hospitalized member NYCRR §360.7(a)(5).
The overall effect of NYSSL §366(2)(a)(8) and NYCRR §§ 360.5 and 360.7 is to set the level of maintenance income that a medically needy family is allowed to live on.
22. Thus, for example, a family of two with a net available income of \$3,500 and medical expenses of \$99 would not be eligible for medical assistance because their income exceeds the \$3,400 level specified in the statute and regulations. Another family of two with net available income of \$5,000 and medical expenses of \$5,000 would be allowed to retain \$3,400 for maintenance expenses and required to contribute the remaining \$1,600 to the cost of medical assistance.
23. The defendants maintain that for a family of two, the payment standard under SSI (a flat grant system) is higher than the "ADC payment standard" (the standard computed under defendant's averaging methodology discussed below). Because the court rejects defendants' route to an assertedly valid ADC payment standard, and it is conceded that a family of two living in Rockland County and paying the same rent as plaintiffs would receive more under ADC than under the SSI program, the ADC program has the higher payment standard. For the remainder of this discussion, therefore, the amount of ADC payments will be considered the higher payment standard.

Opinion

24. In some States, only a specified percentage of a family's standard of need is actually paid. See Rosado v. Wyman, 397 U.S. 397, 408-09 (1970). In New York, 100% of the standard of need is paid out in benefits. Thus, the standard of need and the payment standard are identical in New York's ADC program. See NYSSL §131-a(3).

25. "The following schedule shall be the standard of monthly need for determining eligibility for all categories of assistance in and by all social services districts:

Number of Persons in Household

One	Two	Three	Four	Five	Six
<u>\$94</u>	<u>\$150</u>	<u>\$200</u>	<u>\$258</u>	<u>\$318</u>	<u>\$368</u>

"For each additional needy person in the household there shall be added an additional amount of fifty dollars monthly.

"In addition to the above, the standard of need shall include amounts for shelter and fuel for heating * * *."

NYSSL §131-a(2).

26. Id.

27. "A State plan for medical assistance must -- * * * include reasonable standards (which shall be comparable for all groups and may, in accordance with standards prescribed by the Secretary, differ with respect to income levels, based on the variations between shelter costs in urban areas and in rural areas) for determining eligibility for and the extent of medical assistance under the plan which * * * are consistent with the objectives of this subchapter * * *." 42 U.S.C. § 1396a(a) (17).

28. See note 39 infra.

29. To be sure, an eligibility standard entailing cumbersome calculations and lengthy investigations would be out of step with the simplification philosophy of 42 U.S.C. § 1396a(a) (17) and 45 C.F.R. § 248.3(c) (1). But the ADC methodology is not such a standard. A family's shelter cost, up to the appropriate county maximum, can

Opinion

Footnote 29 cont'd

be ascertained with fair case. As shown by the State's Budget Worksheet for Medical Assistance (Form DSS 517), each social service district must review and verify each claimant's assets and income before passing on his eligibility. Having applicants list their shelter costs and investigating the listed amount should not substantially increase the administrative task. Cf. Shapiro v. Thompson, 394 U.S. 618, 636 (1969).

30. See 2 CCH Medicare and Medicaid Guide ¶15,600, at 6558 (Michigan's medical assistance eligibility standard is expressed as a formula).
31. The federal ADC eligibility regulation requires that the eligibility standard be expressed in "money amounts." 45 C.F.R. § 233.20(a)(2). New York obviously did not view this language as a bar to setting up a variable ADC standard as evidenced by NYSSL § 131-a.
32. Plaintiffs contend that the income levels in NYSSL §366(2)(a)(8) do not accurately reflect statewide shelter allowances even as increased effective October 1, 1975. The parties were to proceed to discovery on this issue if the court denied plaintiffs' summary judgment motion.
33. The parties do not cite, and the court has not found, any direct learning on the intended meaning of the phrase "generally used." We do know that an early draft of 45 C.F.R. § 248.3(c)(1) did not contain the "generally used" language at all. The draft specified that the medical assistance eligibility standard was to be, "as a minimum, at the level of the payment standard used as a measure of financial eligibility in the appropriate money payment program * * *." 38 Fed. Reg. 32219 (1973). The "generally used" language was added in response to comments that the draft language incorrectly implied that separate standards governed the aged, blind and disabled and families with dependent children. 39 Fed. Reg. 9512 (1974). The evolution of the phrase defendants invoke further demonstrates, if it is necessary, the fallaciousness of their reasoning from it.

Opinion

34. Many States, including New York, pay some welfare recipients more than the amount dictated by the generally applied payment standard for unusual or "special" expenses. See, e.g., NYSSL § 131-a(6).
35. Certain individuals who received aid under Titles I, X, XIV, or old XVI of the Social Security Act as of December 1973, were deemed to be eligible for SSI payments, notwithstanding incomes or resources exceeding the new eligibility level under SSI. 42 U.S.C. § 1382(g).
36. 45 C.F.R. § 248.21(a)(3)(i)(B) still applies to Puerto Rico, Guam, and the Virgin Islands.
37. See, e.g., Almenares v. Wyman, 334 F. Supp. 512 (S.D.N.Y.), aff'd 453 F.2d 1075, 1087 (2d Cir. 1971), cert. denied, 405 U.S. 544 (1972); Rosado v. Wyman, 397 U.S. 397, 406 (1970).
38. The HEW Compliance Report for the Quarter ending March 31, 1975, contains the following section:

"Medical Services Program

Medically Needy Level

45 CFR 248.3 (c)(1)(ii)(B)(2)
Section 1903(f)(1)(B)(i) SSA

Due to a series of factors, the cash assistance standards have become more liberal than the MA standards for most family sizes."

It is conceivable that HEW's criticism merely relates to the fact that New York's medical assistance standards have become too low in view of the gradual increase in shelter allowances under the cash assistance programs. Thus it may be that HEW is calling for an updating of the levels set in NYSSL § 366(2)(a)(8).

39. 42 U.S.C. § 1396a(10)(c)(i) arguably provides additional statutory authority for 45 C.F.R. § 248.3(c). See Dominquez v. Milliken, supra at 9119-21.
40. Referring to the "reasonable standards" language, the Report of the House Ways and Means Committee states in part:

" * * * the State plan must include such safeguards as may be necessary to assure that eligibility * * * will be determined * * * in a manner consistent with simplicity of

Opinion

Footnote 40 cont'd

administration and the best interests of the recipient. This provision was included in order to provide some assurance that the States will not use unduly complicated methods of determining eligibility which have the effect of delaying in an unwarranted fashion the decision on eligibility for medical assistance. * * * Under this provision, the States will be eliminating unrewarding and unproductive policies and methods of investigation * * * ."

H.R. Rep. No. 213, 89th Cong., 1st Sess. 66 (1965).

41. The following passage indicates that Congress intended that the medically needy not be forced to live below the applicable public assistance subsistence level:

"In no event * * * may a State require the use of income or resources which would bring the individual's income below the amount established as the test of eligibility under the State plan. Such action would reduce the individual below the level determined by the State as necessary for his maintenance."

S. Rep. No. 404, 1 U.S. Code Cong. & Admin. News 1943, 2019 (1965). See also HEW Handbook of Public Assistance Administration, Supp.D. § D-4240 (A) (2) (1966).

42. See, e.g., Haberman v. Finch, 418 F.2d 664, 667 (2d Cir. 1969); Gold v. HEW, 463 F.2d 33, 41 (2d Cir. 1972).
43. See these observations in the course of hearings on Medicaid legislation by George K. Wyman, a former New York Commissioner of Social Services:

"The major cause of dependency in the United States is illness. Everyone agrees that the 'poorest of the poor,' those who receive public assistance, should have their medical care needs met. Also, most people believe we should prevent dependency if at all possible. Therefore it makes good, common sense to help those persons who are able to support themselves with food, clothing, and shelter but who need assistance

Opinion

Footnote 43 cont'd

With their medical care bills. This means we should help the workingman who is faced with a sizable medical bill, in order that he will not have to mortgage his home, sell his car, or go into debt, in order to pay the medical obligation, or, even worse, deplete himself of his resources to the point where he becomes a welfare recipient."

Hearings on H.R. 12080 Before the Senate Finance Committee, 90th Cong., 1st Sess., pt. 3, at 1547 (1967).

Memorandum Opinion of the District Court
re: Proposed Orders and Judgments

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x
MARION AITCHISON, et al., :
Plaintiffs, :
-against- : 75 Civ. 1224
STEPHEN BERGER, et al., : MEMORANDUM
Defendants. :
- - - - - x

FRANKEL, D.J.

The parties have submitted differing forms of orders and judgments, the differences reflecting two major issues:

- (1) Whether members of the plaintiff class are entitled to so-called "future adjustments" to compensate for the period prior to the judgment during which, as they allege and the court's decision assertedly shows, they were entitled to retain higher amounts for maintenance than the state's medicaid provisions permitted them.
- (2) Whether the judgment now being entered should be stayed pending appeal.

Memorandum Opinion

The first of these issues creates problems of equitable remedies and sovereign immunity under the decisions in Rothstein v. Wyman, 467 F.2d 226, 232-38 (2d Cir. 1972), cert. denied, 411 U.S. 921 (1973) and Edelman v. Jordan, 415 U.S. 651 (1974). The concerns thus generated may be more complex and more difficult than the epistolary submissions of the parties on proposed orders would seem to suggest. Nevertheless, it appears to the court that, under the applicable law, plaintiffs are not entitled to the retroactive relief they label "future adjustments," at least not against any named defendant.* Accordingly, the court's judgment will be limited to prospective injunctive and declaratory relief.

The remaining question, as to a stay, is not entirely unrelated, at least in the sense of its equitable impact. Resisting retrospective payments, the defendants' application for a stay would seemingly adjourn for some indefinite period any of the payments or allowances now determined to be required under this court's decision until the prosecution and decision of an appeal. Considering the relative burdens and the balances of hardship, and subject

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* Whether all or any part of the claimed "future adjustments" might be recovered from the various counties in New York cannot be adjudicated in this action where no county or other municipal body was named as a defendant. Cf. Dunlop v. State of New Jersey, 522 F.2d 504, 515-16 (3d Cir. 1975).

Memorandum Opinion

always to the wisdom of a higher tribunal, this court balances the pertinent considerations by denying the application for a stay.

Upon the foregoing premises, the court has concluded that the order and judgment submitted by defendants, as modified by the court, should be signed at this time to permit the prompt processing of any appeals.

Dated, New York, New York
December 3, 1975

U.S.D.J.

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Order and Judgment of the District Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARION AITCHISON, et al.,

Plaintiffs,

- against -

STEPHEN BERGER, et al.,

Defendants.

ORDER AND JUDGMENT

75 Civ. 1224
M.E.F.

4-28
2-27
10-28

This cause having come to be heard on plaintiffs' motion for summary judgment under F.R.C.P. 56 on their third claim, as amended, alleging that New York Social Services Law § 366(2)(a)(8) and 18 New York Code^s Rules, and Regulations §§ 360.5(e) and 360.7(a)(5) are inconsistent with 45 C.F.R. § 248.3(c)(1)(ii) and therefore invalid and for a class action order under F.R.C.P. 23; and on defendants' motion to dismiss the action under F.R.C.P. 12(b)(1) and (6) for want of a substantial constitutional question and, in the alternative, for summary judgment in their favor under the F.R.C.P. 56 on plaintiffs' third claim, as amended; and the Court having considered the pleadings, affidavits, stipulations, and memorandum of law submitted by the parties; and the Court having heard oral argument; and after due deliberation, having filed its opinion on November 12, 1975, it is

ORDERED that defendants' motions to dismiss for want of a substantial constitutional question, and, in the alternative, for summary judgment in their favor on plaintiffs' third claim, as amended, be and the same hereby are denied; and it is further

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need for
10-28

ORDERED that plaintiffs' motion for a class action order under F.R.C.P. 23 be and the same hereby is granted, said class to consist of all applicants for and recipients of medical assistance only who by reason of the application of New York Social Services Law § 366(2)(a)(8) and 18 NYCRR §§ 360.5(e) and 360.7(a)(5), retain less monthly exempt income than ^{the standard of} ~~is paid to~~ families of the same size, paying the same shelter cost (plus cost of fuel where applicable) and living in the same social services district who have qualified for categorical public assistance ^{under} on the Aid to Families with Dependent Children

Order and Judgment of the District Court

program; and it is further

ORDERED that plaintiffs' motion for summary judgment be and the same hereby is granted to the extent herein after set forth; and it is further

ORDERED, ADJUDGED AND DECREED that 45 C.F.R. §246.3(c)(1)(ii) is declared consistent with 42 U.S.C. §§ 1396a(a)(17) and § 1396a (10)(c)(i) and therefore valid; and it is further

ORDERED, ADJUDGED AND DECREED that New York Social Services Law § 366(2)(a)(8) and 18 NYCRR §§ 360.5(e) and 360.7(a)(5) are declared inconsistent with 45 C.F.R. § 248.3(c)(1)(ii) and therefore invalid as applied to the class; and it is further

ORDERED that defendants, their officers, agents, employees and successors in interest be and they hereby are permanently enjoined from enforcing New York Social Services Law § 366(2)(a)(8) and 18 NYCRR §§ 360.5(e) and 360.7(a)(5) against the class so as to permit said individuals to retain less monthly exempt income than ~~is paid~~ to families of the same size, paying the same shelter cost (plus cost of fuel where applicable) and living in the same social services district who have qualified for categorical public assistance on the Aid to Families with Dependent Children program; and it is further

ORDERED that the retained exempt income of class members shall be recomputed in conformity with the provisions of this Order and Judgment within ²⁵ days from the entry hereof; and it is further

ORDERED that defendant Stephen Berger, Commissioner of the New York State Department of Social Services, or the officers or employees of said Department shall transmit to the Commissioners of

7/18/78
as applied
to the class
herein
7/18/78

7/18/78
the standard

7/18/78

Order and Judgment of the District Court

all social services district within the state instructions to
conform with the provisions of this Order and Judgment within ¹⁰~~13~~
business days after the entry hereof, and it is further

ORDERED that the enforcement of the provisions of this
Order and Judgment be and the same hereby are stayed pending the
state defendant's appeal to the Court of Appeals for the Second
Circuit on condition that said defendant file his Notice of
Appeal within 5 business days following the entry of this Order
and Judgment and that said defendant undertake before the Court of
Appeals to pursue an expedited appeal on such schedule as that
Court may direct.

Dated: New York, New York
November 3, 1975
~~December~~

Maurice E. Frankel

Defendant Berger's Notice of Appeal

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MARION AITCHISON, individually and :
on behalf of MICHAEL AITCHISON and :
JANICE AITCHISON, her children, and :
on behalf of all other persons :
similarly situated, :

Plaintiffs, :

-against- :

STEPHEN BERGER, individually and :
as Commissioner of the Department :
of Social Services of the State of :
New York, and NOAH WEINBERG, indi- :
vidually and as Commissioner of :
the Department of Social Services :
of Rockland County, New York, :

Defendants. :
-----X

NOTICE OF APPEAL

75 Civ. 1224
(N.E.P.)

Notice is hereby given that defendant STEPHEN BERGER, hereby appeals to the United States Court of Appeals for the Second Circuit from the Order and Judgment of the HONORABLE MARVIN E. FRANKEL, United States District Judge for the Southern District of New York, in the above captioned action granting plaintiffs' motion for a class action and for summary judgment on their third claim, as amended; and declaring 45 C.F.R. § 248.3(c)(1)(ii), as applied to the class, consistent with 42 U.S.C. §§ 1396a(a)(17) and 1396a(10)(c)(1); declaring New York Social Services Law § 366(2)(a)(8) and 18 New York Codes, Rules and Regulations §§ 360.5(e) and 360.7(a)(5), as applied to the class, inconsistent with 45 C.F.R. § 248.3(c)(1)(ii); permanently enjoining the enforcement of NYSSL § 366(2)(a)(8) and 18 NYCRR §§ 360.5(e) and 360.7(a)(5) against the class; and requiring recomputation of the retained exempt income of class members to conform with the terms of the Order and Judgment within 25 days from the entry thereof; and denying said defendant's motion to dismiss the action, or, in the alternative, for summary judgment on plaintiffs' third claim,

Notice of Appeal

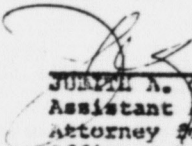
as amended; and from each and every part of said Order and Judgment.

The Order and Judgment was entered on or about December 3, 1975.

Dated: New York, New York
December 5, 1975

Yours, etc.,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
By



JOSEPH A. GORDON
Assistant Attorney General
Attorney for Defendant Berger
Office & P.O. Address
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Tel. No. (212) 462-7400

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Attorneys for Defendant
Noah Weinberg

Stipulation dated December 15, 1975 and Order
modifying Order and Judgment of the District
Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

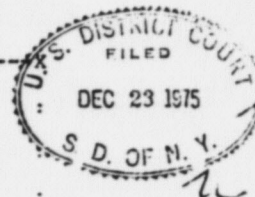
MARION AITCHISON, individually and
on behalf of MICHAEL AITCHISON, and
JANICE AITCHISON, her children, and
on behalf of all other persons similarly
situated,

Plaintiffs,

-against-

STEPHEN BERGER, individually and as
Commissioner of the Department of Social
Services of the State of New York, and
NOAH WEINER, individually and as
Commissioner of the Department of Social
Services of Rockland County, New York,

Defendants.



: STIPULATION

: 75 Civ. 1224

M.E.F.

IT IS HEREBY STIPULATED AND AGREED by and between
the attorneys for the respective parties to the above captioned
action that:

1. The Order and Judgment entered by the District
Court on December 3, 1975 be and the same hereby is amended and
modified by deleting from the seventh decretal paragraph
the number "25" and inserting instead the number "75," said
decretal paragraph, as amended and modified, to state as
follows:

"ORDERED that the retained exempt
income of class members shall be
recomputed in conformity with the
provisions of this Order and
Judgment within 75 days from the
entry hereof; and it is further"

2. The 75 day period described in the seventh
decretal paragraph of the Order and Judgment of the District
Court, amended and modified as set forth in ¶ 1 above, shall

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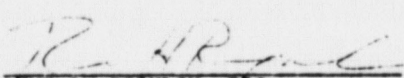
Stipulation modifying Order and Judgment

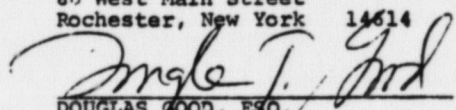
start on December 3, 1975 and shall continue thereafter provided however that the running of said 75 day period shall be tolled by the issuance of any stay (or stays) in defendant's favor and the tolling of said 75 day period shall continue for the duration of said stay (or stays). The commencement of the 75 day period on December 3, 1975 is without prejudice to defendant's application to the district court to extend or otherwise modify said period in the event he does not prevail on the merits of his appeal(s) and/or that a stay (or stays) are not issued to protect the status quo as it existed prior to the entry of the Order and Judgment on December 3, 1975 (subject to the exception in favor of the named plaintiffs described in the affidavit of Judith A. Gordon, sworn to December 10, 1975, and filed on defendant's behalf in the United States Court of Appeals for the Second Circuit).

3. In the event the defendant does not prevail on his appeal(s) from the Order and Judgment of the District Court, he recognizes that his obligation to establish exempt income levels for medical assistance only recipients in conformity with said Order and Judgment arises as of December 3, 1975.

4. A Stipulation containing the same substantive provisions shall be executed and filed in the United States Court of Appeals for the Second Circuit.

Dated: New York, New York
December 15, 1975


RENE A. REIXACH, ESQ.
Greater Up-State Law Project
Monroe County Legal Assistance Corp.
80 West Main Street
Rochester, New York 14614


DOUGLAS GOOD, ESQ.
Rockland County Legal Aid Society
Attorney for Plaintiffs
2 Congers Road
New City, New York 10956

Stipulation modifying Order and Judgment

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Rockland County Attorney
By:

John B. Franklin, Esq.
JOHN B. FRANKLIN, ESQ.
Assistant County Attorney
Attorney for Defendant Weinberg
11 New Hempstead Road
New City, New York 10956

LOUIS J. LEFKOWITZ
Attorney General
By:

Janith A. Gordon
JANITH A. GORDON
Assistant Attorney General
Attorney for Defendant Berger
Two World Trade Center
New York, New York 10047

As ordered December 22, 1975

Moshe E. Frankel

U.S.D.J.

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Order dated December 19, 1975 endorsed on Notice of Motion granting plaintiff's application to proceed in forma pauperis on appeal

Index No. 75 Civ. 1224 Year 19

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARION AITCHISON, individually and on behalf of MICHAEL AITCHISON and
JANICE AITCHISON, her children, and on behalf of all other persons
similarly situated,

Plaintiffs,

- against -

ABE LAVINE, individually and as Commissioner of the Department of
Social Services of the State of New York, and NOAH WEINBERG, individ-
ually and as Commissioner of the Department of Social Services of
Rockland County, New York,

Defendants.

NOTICE OF MOTION FOR LEAVE TO APPEAL IN FORMA PAUPERIS

LEGAL AID SOCIETY OF ROCKLAND COUNTY, INC.

Attorney for: Plaintiffs
ALTON L. ABRAMOWITZ
DOUGLAS J. GOOD, of counsel
2 CONGERS ROAD P.O. BOX 314
NEW CITY, NEW YORK 10956
TEL. (914) 634-3627

To:

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated:

Attorney(s) for

PLEASE TAKE NOTICE

☐ that the within is a (certified) true copy of a
NOTICE OF ENTRY entered in the office of the clerk of the within named court on

☐ that an Order of which the within is a true copy will be presented for settlement to the Hon.
NOTICE OF SETTLEMENT at one of the judges of the within named Court.

at

19

, at

M.

Dated:

LEGAL AID SOCIETY OF ROCKLAND COUNTY, INC.

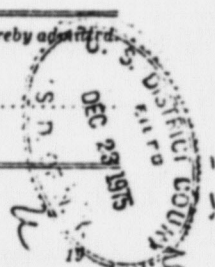
Attorney for:

2 CONGERS ROAD P.O. BOX 314
NEW CITY, NEW YORK 10956

To:

Attorney(s) for

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Dec 19, 1975
U.S.D. of
New York
Southern District
of New York
U.S.D. of
New York